

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY, 24TH JULY,  
2001 AT 11 A.M.

MR. COUGHLAN: Mr. Aidan Phelan.

MR. FITZSIMONS: Chairman, just before the proceedings  
start, there is one minor point arising out of the  
transcript that I mentioned to Mr. Coughlan, at page 26  
of yesterday's transcript. There is a question and  
answer that is inadvertently admitted and I was  
wondering would it be possible to have it corrected?

CHAIRMAN: You have discussed it with Mr. Coughlan, I  
take it? I didn't advert to it in reading the  
transcript last night, Mr. Fitzsimons, but each of you  
are satisfied that there was one matter that

MR. FITZSIMONS: Mr. Coughlan wasn't here, I didn't  
specify the precise omission.

MR. COUGHLAN: My friend just read's it in correctly,  
it would be picked up in the transcript.

MR. FITZSIMONS: Perhaps if I could do that.

In the middle of page 26, the Chairman intervenes.

"I'll see that he has that opportunity, Mr. Hogan."

Now after that, Chairman, I repeated the same question  
as question 106 in the transcript. And Mr. Desmond  
answered "Yes" and

CHAIRMAN: I think well, that does equate with my own recollection, Mr. Fitzsimons, so we'll simply deem that limited addendum to be part of the revised record.

MR. FITZSIMONS: Thank you, Chairman.

AIDAN PHELAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Phelan, I think you furnished a number of statements for the assistance of the Tribunal, isn't that correct?

A. Yes.

Q. And do you have those with you in the witness-box?

A. I believe I do, yes.

Q. I suppose the best way is if I deal with matters as they unfolded in time and the first matter that I'd like to ask you about is the, what is described as the political donation, that is the \$50,000 donation, Telenor/ESAT donation which was made payable to Mr. Austin. I think you are familiar with that now?

A. Yes.

Q. Now, I think in your statement on the 1st June, in the second paragraph I think you informed the Tribunal that you had no knowledge of this payment prior to the occasion on which you were asked, I think, to make contact with Mr. David Austin around the time of the IPO of ESAT Digifone or ESAT Telecom in November

of 1997, isn't that correct?

A. Yes, around about that time.

Q. Can I take it that you

CHAIRMAN: Mr. Coughlan, sorry, would we perhaps just establish his profession and partnership and base?

Q. MR. COUGHLAN: Very good, Sir.

I think, Mr. Phelan, you are a chartered accountant by profession?

A. A certified accountant.

Q. And I think you have had Mr. Denis O'Brien and numerous companies of his as clients over the years, is that correct?

A. Yes.

Q. When did you first have a business relationship with Mr. O'Brien?

A. I first acted for Denis O'Brien in or around 1987.

Q. And were you in partnership at that time?

A. I was, yes, I was a partner in Brian Phelan & Company.

Q. Was that your father's practice?

A. My father's practice, yeah.

Q. I think your brother was also in practice with you?

A. Yes, he is Brian as well.

Q. Now, I think you then Mr. O'Brien and his companies were clients of the firm, is that correct?

A. Yes.

Q. And were you the partner who dealt with Mr. O'Brien and

his companies?

A. Ostensibly, yes.

Q. Now, I think Ms. Helen Malone provided secretarial services to your practice, isn't that correct, Brian Phelan & Company?

A. Yes.

Q. I think subsequently you and Ms. Malone went into partnership in a company or a firm called AP Consulting, is that correct?

A. Yes.

Q. And is that the current position?

A. Yes.

Q. And when did that partnership come about?

A. November, '98.

Q. And up till 1998 you were in practice under the style or title of Brian Phelan & Company, is that correct?

A. I had yes.

Q. And was that the capacity in which Mr. O'Brien and his companies were clients of yours as a partner in that practice?

A. Yes.

Q. Now, what type of services

A. sorry, could I just correct something there? I had actually left Brian Phelan & Company. There is a period between when I left Brian Phelan & Company to, I started with Helen in practice where I was just on my own.

Q. You were just on your own?

A. But I was working out of the offices of Brian Phelan & Company.

Q. You used the facilities of the office but you were carrying on your own practice?

A. Yes.

Q. You were no longer in partnership with your brother?

A. Correct.

Q. What period was that?

A. In or around, like, '97, sort of early '97.

Q. Early '97. And then you commenced practice with Ms. Malone in the new firm of AP Consulting?

A. I was AP Consulting sole trader and then the partnership started sometime later.

Q. I see. So you continued to work out of the premises of Brian Phelan & Company as AP Consulting as a sole trader and then in 1998 Ms. Malone joined you as a partner in that practice?

A. No, she worked for me when I was on my own she worked part-time for me and then we formed a partnership.

Q. Just to be clear, Ms. Malone provides secretarial services?

A. Yes.

Q. Company secretarial services, I mean?

A. Yes.

Q. And when you went into practice on your own in 1997,

was Mr. O'Brien and his companies your main client?

A. The companies the statutory responsibility stayed with the practice and I looked after O'Brien's personal financial affairs.

Q. That would have been from early '97 on?

A. Yes.

Q. Until when?

A. Until November '99, or thereabouts.

Q. Now, I think if we could go back to the political donation, if I may describe it as that for a moment.

Did you know in late 1995, December of 1995 or January of 1996, that a contribution of \$50,000 had been paid to Mr. David Austin purporting to be on behalf of the Fine Gael Party?

A. No.

Q. You didn't?

A. No.

Q. I think you became involved in the matter around the time of the IPO of ESAT Telecom in November of 1997, is that correct?

A. Yes.

Q. I think you may have gleaned some knowledge in late October about this particular issue?

A. Yes. When probably when the, in around maybe the first meeting or second meeting, I may have been aware of it.

Q. And I'll come back to deal with it again in a moment,

but I think you were the person who made contact with the late Mr. Austin, which resulted in the handwritten note which we have all seen and has been referred to in evidence and I'll refer to it again in a moment. You were the one who made contact to get that, isn't that right?

A. Yes.

Q. And I think you made contact with Mr. Austin on two occasions in respect of that particular note, isn't that correct? I think you informed the Tribunal that when you first made contact he was unwell, having had chemotherapy, and you contacted him again a few days later and that resulted in the note being obtained, is that right?

A. Yes.

Q. Do you know who requested you to make contact with Mr. Austin?

A. From recollection, it was either Paul Connolly or Leslie Buckley.

Q. And do you know why you were chosen if we could just explore that? I think you were close to Mr. Austin, is that correct?

A. Yes.

Q. And, in fact, it transpired you ultimately were one of his executors, isn't that correct?

A. Correct.

Q. Now, can I take it that it would have been known to

people involved in ESAT Digifone or ESAT Telecom or associated with it, that you were close to Mr. Austin, would that be correct to say?

A. No.

Q. They wouldn't have known?

A. No.

Q. And how do you know how contact was made with you to make contact with Mr. Austin?

A. I am not quite sure of that question.

Q. You believe that either Mr. Paul Connolly or Mr. Leslie Buckley made contact with you?

A. Yes.

Q. To make a phone call to Mr. Austin?

A. Buckley was a common director.

Q. He was a common director of Telecom and Digifone, isn't that correct?

A. Yes.

Q. You were in the United States when this contact was made, isn't that correct?

A. Yes.

Q. So do you believe you must have received a phone call in the United States. Mr. Connolly was in the United States as well at the time, wasn't he?

A. Yes.

Q. Mr. Buckley was in Ireland?

A. Yes.

Q. So somebody must have contacted you either by telephone



or, if it was Mr. Connolly, he may have spoken to you personally, isn't that correct?

A. Yes.

Q. How would either of those men have known that you were close to Mr. Austin and could make an approach to him?

A. Paul I was on the road with Paul for months. He would know, general discussion.

Q. And what about Mr. Buckley, would he have known?

A. Denis O'Brien may have told him.

Q. But in any event, we can return and deal with these matters again, but in any event, the first phone call you made to Mr. Austin, he was unwell, isn't that correct?

A. Yes.

Q. Were you able to speak to him on that occasion?

A. Yes.

Q. And what did you ask him to do?

A. I asked him would he confirm that the donation he received was passed on to Fine Gael, the \$50,000.

Q. And what did he say to you?

A. He said he would.

Q. And you had to make a second contact with him, is that right?

A. Yes.

Q. And why was that?

A. Because he was in his house in France and I made second contact with him when he was at a fax so as he could

fax the letter.

Q. And where was that?

A. It might I don't know, I think it was somewhere in France, I don't know.

Q. You think it was somewhere in France. But you believe it was in France on both occasions when you spoke to him, is that right?

A. Yes, from recollection.

Q. And can you remember how long between the first and the second contact in terms of days, if you can?

A. Well, I know I got the letter on the 6th November.

Q. That's from Mr. Austin?

A. From Mr. Austin. It would have been a few days before that. It might have been the 3rd but it would be days rather than

Q. yes. And did he fax that to you in the United States?

A. Yes.

Q. And what did you do with it?

A. I gave it to Paul. I passed it on to Paul or I may have sent it back to Dublin to Buckley. I passed it on to either Paul or Leslie Buckley.

Q. And did you have any discussion with Mr. Austin about the content of the note?

A. Yes.

Q. What was that?

A. When I was asked to get the letter, the one piece of

information I got was that there was a dinner held in New York in the Club 21 in November '95 and I said I described that to David and he told me it wasn't November, it was December, and that was the only discussion. He wrote the letter 'To whom it concerns'.

Q. Now, I think you would have become aware of the donation and Mr. Austin's involvement in it sometime late in October of 1997, coming up to the IPO, would that be correct?

A. I can't recollect exactly whether it was October or right on the road in the US, they are very close, you know, it's either very late October '97 or early November.

Q. You went to a meeting, or you accompanied Mr. Denis O'Brien to a meeting with Mr. Owen O'Connell, the solicitor in William Fry's, of ESAT Telecom on the 22nd October of 1997, isn't that correct?

A. Yes.

Q. That particular meeting primarily concerned matters which Mr. Barry Maloney had raised, isn't that right?

A. That's correct, yes.

Q. Now, do you believe that at that time you would have known about this particular matter or was it a few days later you would have heard about it, do you think?

A. I just can't recall.

Q. It's possible it may have been a few days later, it's unclear at the moment as to when Mr. Johansen discussed

the matter with Mr. Maloney about the donation, but in any event, you do remember meeting with Mr. O'Connell and Mr. O'Brien on the 22nd October of 1997?

A. Yes, I recall being there.

Q. Could I ask you, how did you happen to be there?

A. At the time I went to nearly any meeting that Denis was going to, he would ask me to accompany him in or around that time, we were very close.

Q. You were very close?

A. Yeah.

Q. Apart from looking after his personal affairs, were you also in effect, an adviser to Mr. O'Brien in relation to matters of business, would that be fair?

A. Yes, that's fair.

Q. And he would have kept you reasonably informed of his affairs, would that be fair?

A. Not fully.

Q. Not fully?

A. No.

Q. I accept that it may not be fully, but would you have expected that you would have had a reasonable understanding of his business affairs?

A. Yes.

Q. Now, I think that, if I could just find Mr. O'Connell's notes for a moment, I think you have seen Mr.

O'Connell's notes, handwritten notes?

A. yeah.

Q. of events. If you just bear with me for a moment, Mr. Phelan. I think you had a conversation with Mr. O'Connell, perhaps by telephone, regarding Mr. Austin and the question of fundraising, isn't that correct?

A. Yes.

Q. I'll just find the note, if I can now. I'll find it in a moment, but can you remember seeing in the notes, first of all, an expression to the effect that this type of activity, of money being paid to an offshore account to David Austin and then to Fine Gael, was not unusual?

A. This is the note of the 5th November?

Q. This is the 5th November, yes?

A. Yeah, I don't really recall this particular conversation but you know,

Q. You don't recall the conversation?

A. I don't recall this particular conversation but I can try and I have read Owen's comments on this and I can try and explain, possibly, the atmosphere in which it took place.

Q. Would you accept first of all that Mr. O'Connell is recording reasonably accurately what was being conveyed to him by you? You'd expect that of a solicitor taking a note?

A. I would expect his notes he was the author of the note, yes.

Q. But you would expect that as a solicitor he would be

keeping a reasonable note of what was being conveyed to him by somebody talking to him, you'd expect that?

A. I would expect it.

Q. So can we take it that whilst you don't have a clear recollection of the matter now, that it must accord with what was being said to Mr. O'Connell by you?

A. Well,

Q. And if we just read the note, it's the note of the 5th November, 1997, it's at tab 13 of Mr. O'Connell's book.

And the note for that, it's dated 5th November, and it's headed "Aidan Phelan. Board meeting being convened. Denis O'Brien spoke to TK several times. He supportive. Disclose McCarthy; all a matter for the board (and Jack but lawyers to take instructions).

Denis O'Brien spoke Barry O'Callaghan. (CSFB) will also speak to Tony Belinkoff. O'Callaghan no major problem ("precis version").

Denis O'Brien seeking Jack McCarthy.

Letter from Fine Gael. DFTA has done this for years.

"Ugly bits never talked about". Money to DFTA, then invitation. DFTA collects money, always an offshore account. DFTA is offshore (lives in France)." Do you remember saying that or something like that to Mr.

O'Connell?

A. No.

Q. You don't? Do you have any understanding of what the note is intended to convey?

A. Will I work down through it?

Q. Well, I think the first if it's of assistance to you the first portion of the note seems to be dealing with talking to the bankers and the underwriters, is that correct?

A. No, the board meeting being convened would be something Owen told me.

Q. Right.

A. I wouldn't

Q. You wouldn't have known?

A. I wouldn't have known that. Probably the other things, the update on the bankers and that is probably something I would have said to him but there may have been debate, you know, an interchange between the two of us in relation to these matters.

Q. Of course.

A. The one thing that puzzles me about this note like, "DFTA" - David "has done this for years." David never discussed politics or fundraising with me so I think these notes here are more to do with the general collection of political donations and invoices and things like that. Like, when this "DFTA collects money, always an offshore account." I mean, "Always an offshore" I wouldn't have any sense of that at all.

That looks like it's a question and I am saying David is offshore, he lives in France. Now, that's the best I can do in terms of

Q. Yes. But if we just go through it, sentence by sentence. "Letter from Fine Gael". Would you have at that stage been in a position to inform Mr. O'Connell that you were getting a letter from David Austin?

A. Most likely, yes.

Q. Then "DFTA has done this for years."

A. That's something I couldn't have said because whatever way it's written down, I am not questioning that I mean, I was in Houston this day - in the US - I don't know what time it was or but I couldn't have said that because I certainly didn't know anything about David Austin's activities and he never discussed politics with me or fundraising.

Q. And then the next sentence is in quotation marks "Ugly bits never talked about."

A. I seem to remember some reference to the getting of invoices, like, generally about political parties and invoices. I don't know why that would be there because it wasn't until sometime afterwards I understood this whole thing about Telenor and the invoice.

Q. But it would seem, and Mr. O'Connell has given evidence of course, but just on the note itself it's in quotation marks, it seems to be attributable to you, would you accept that?

A. I would accept that.

Q. And you think that that would have been in the nature of a general conversation rather than it being specific



to Mr. Austin?

A. I think there may have been a conversation which over-spilled from some conversations Owen had about invoices.

Q. And then you think the rest of the note which reads "Money to DFTA - then invitation. DFTA collects money - always an offshore account." that that is not a specific reference to Mr. Austin but you think it indicates a general conversation in relation to political collection?

A. Well, "Money to DFTA - then invitation." just doesn't mean anything to me.

Q. Right.

A. Because David, first of all, I believe, until I spoke to David and informed him about the dinner - to get the letter, I really wasn't on top of this, so I am not sure whether this is something that we are debating. I accept the quotation marks are probably attributable to me.

Q. But you believe that you would have got the letter, you think, about the 5th or the 6th?

A. It was the 6th.

Q. You think you would, first of all, have had made contact with him perhaps about the 3rd, a few days previously?

A. 3rd or 4th.

Q. And when you first spoke to him you had some

understanding of what you were looking for, isn't that correct?

A. Yes.

Q. So whilst you might not have been fully up to speed in relation to the matter, you would have known that what was required here was some sort of a receipt or an acknowledgment or something of that nature

A. confirmation.

Q. confirmation this money had gone where it was intended to and should have gone, isn't that right?

A. Yes.

Q. So would you think then that by the 5th November when you were talking to Mr. O'Connell the letter had been secured or you knew that it was coming, isn't that right?

A. No, it wasn't secured.

Q. It was not secured?

A. No. I spoke to David, asked him would he do a letter.

He wasn't too well and I said 'I'll come back to you'.

I don't believe I spoke to him again until the 6th.

Q. What happened on the 6th? What did you say to him on the 6th?

A. I asked him how he was and could he get to a fax and he said he was much better and would.

Q. And that was all?

A. We talked about the content of the letter, just general terms, confirming that he received the donation and

forwarded it to Fine Gael.

Q. Did Mr. Austin sound frail at the other end of the phone at this stage?

A. He sounded much better than he did two or three days before.

Q. Did he seem to have a clear recollection of events or did you have to fill him in on any matters?

A. He'd a fair recollection of obviously I believe subsequently, the date is incorrect, he mis-corrected the I was told it was November and he said it was December, I don't know whether it's relevant.

Q. Who told you it was November?

A. It was either Paul or Leslie.

Q. Paul or Leslie would have told you that there was a fundraising event in November?

A. Yes.

Q. And what else did either Paul or Leslie tell you about the matter?

A. Nothing 'Could I get a confirmation from David?'.  
Q. Well, did they tell you the amount?

A. 50,000, yeah, dollars.

Q. They told that you it was a fundraising dinner or lunch or whatever?

A. Dinner.

Q. And that it was in New York, is that right?

A. Yes.

Q. And that it was in November of '95, is that right?

A. Yes.

Q. And did they tell you who had made the payment?

A. I believe so, yes.

Q. Well, who did they tell you?

A. Telenor.

Q. That Telenor had made the payment. And did you know why ESAT Telecom were looking for this?

A. Yes.

Q. Who told you that?

A. Either Leslie or Paul.

Q. And what was the purpose for which ESAT Telecom was looking for this confirmation as reported to you?

A. That the directors of Digifone who, at the time were they were they were releasing information for the prospectus and wanted comfort on the issue.

Q. And the issue of information to be released was financial information, isn't that right, the numbers?

A. I believe elements of their business plan, numbers.

Q. And was it explained to you why the directors of ESAT Digifone were seeking comfort in relation to a Telenor contribution or donation?

A. It wasn't explained fully, no.

Q. It wasn't. Was anything explained?

A. No. I was aware that the directors of Digifone were not particularly happy about the ESAT Telecom IPO.

Q. Mm-hmm. You believed that the directors was ESAT Digifone were not terribly happy about the IPO of ESAT

Telecom, is that right?

A. Yes.

Q. Not happy. What do you mean by 'not happy'?

A. Not happy from a financial point of view that effectively, they were going to be, a big part of their undertaking was going into the public market which would render their route to the public market maybe that bit more difficult.

Q. And was this discussed with you in the context of obtaining a letter from Mr. Austin?

A. No, but I believe there was general, they were generally unhappy.

Q. Which directors in particular do you believe?

A. Well, Barry Maloney was not happy.

Q. Mm-hmm.

A. Particularly. I am not quite sure whether Barry was on the board actually, I just

Q. he may have been a non-voting director?

A. He may have attended meetings but he certainly wasn't happy.

Q. And anyone else?

A. I don't think the Norwegian people were that happy. I wouldn't have been privy to a lot of the discussions, it's just the general atmosphere.

Q. Did when you spoke to Mr. Austin had anyone told you about Mr. O'Brien's involvement in the \$50,000 donation?

A. No.

Q. Nobody at all?

A. No.

Q. So you didn't know anything about Mr. O'Brien's involvement in it when you spoke to Mr. Austin, is that correct?

A. That's correct.

Q. And whether it was Mr. Connolly or Mr. Buckley made contact with you, neither of those gentlemen mentioned anything to you about Mr. O'Brien's involvement in the matter?

A. No.

Q. You never ?

A. from the best of my recall I have to say that, just as a general principle, when you are doing an IPO it's very disruptive from the point of view of time, you are moving around different time zones, so I want to be as best assistance as I can but, you know, from recollection, a lot happened in a very short period of time.

Q. I can understand that and there will be no difficulty and the Tribunal appreciates that but we are just trying to get the best evidence that we can to build up a complete picture of the situation. You had no conversation with Mr. O'Brien before you spoke to Mr. Austin, is that correct?

A. That's correct. I don't recall having one, to the best

of my knowledge, no.

Q. And you did not know about Mr. O'Brien's role in the matter before you spoke to Mr. Austin?

A. That's correct.

Q. Or indeed after you spoke to Mr. Austin, is that correct?

A. Yes, that's correct.

Q. And when is the first time that you got any information about Mr. O'Brien's role in the matter?

A. I actually can't recall. The \$50,000 donation was just not a big issue for me.

Q. I understand that as well, yes, I understand that?

A. It just wasn't a big issue for me.

Q. I am just trying to understand here, you spoke to Mr. Austin, having been contacted by either Mr. Connolly or Mr. Buckley, you can't be sure which of the men spoke to you?

A. Yeah.

Q. And all you were told was that there was a dinner in New York, the information was conveyed to you that it was in November, that the sum involved was \$50,000, that the fundraiser was Mr. Austin, is that correct?

A. Yes.

Q. You knew nothing about and that Telenor had made

A. I think David might have been the organiser.

Q. yes.

A. of the thing same thing.

Q. The organiser or fundraiser in this context, that he was the fundraiser in respect of this particular sum of money and that Telenor had made the donation, is that correct?

A. Yes.

Q. That's all you were told?

A. Yeah.

Q. Did you wonder at all why Mr. Buckley or Mr. Connolly would be asking you to approach Mr. Austin if Telenor made a political contribution?

A. No.

Q. You didn't wonder?

A. No.

Q. I see. And did you wonder why the directors of ESAT Digifone should be in any way unhappy or concerned if Telenor made a political contribution?

A. I didn't wonder.

Q. And did you wonder at all why the board of ESAT Telecom, or I think at the time Mr. Buckley may have been, if it was Mr. Buckley, he was perhaps the acting Chief Executive Officer at the time, perhaps around that time when Mr. O'Brien was on the roadshow, and what role did Mr. Connolly have in ESAT Telecom? I think he may have

A. he was on the board.

Q. He was an alternate director at least?

A. In Digifone I think he was an alternate and in Telecom



he was a main director.

Q. He was a main director. And did you wonder why directors of ESAT Telecom would be asking you to approach Mr. Austin to get confirmation that Telenor had made a political contribution and had gone to Fine Gael?

A. Well, Leslie was also a director of Digifone.

Q. But none of this caused you to ask any question or to wonder in your own mind why you should be approaching Mr. Austin, who was a close friend of yours, isn't that correct?

A. Correct.

Q. And who was undoubtedly quite unwell, isn't that right?

A. He was unwell. He had, I think, a treatment at that stage.

Q. And why you should be asked to approach a sick friend for a note which, on the face of it, on the information you were being given, seemed to have no impact or relevance to either ESAT Telecom or ESAT Digifone?

A. I didn't think it was if I could say every day I would have a to do list of maybe 50, 100 things. David's letter was one of them, you know

Q. I can understand that and I don't think anyone would expect you to remember many of these things, but was this just a job to be done?

A. As far as I was concerned, yes.

Q. But you were approaching a very sick man for this

purpose, isn't that correct?

A. That's correct.

Q. I take it in the normal course of events you wouldn't have troubled Mr. Austin in the state he was in other than to inquire how he was, perhaps?

A. Yeah, I made regular contact with him.

Q. That was inquiring about his health, I take it?

A. Yes.

Q. Did Mr. Austin use an expression or can you remember, first of all, did Mr. Austin ever use an expression that he would furnish a letter 'If push comes to shove' or words to that effect?

A. I think that expression was my expression, that when the letter was mentioned to me originally it was a very casual mention and it may have been raised with me again and I would have said 'In my own time I'll get a letter from David'. 'If push comes to shove' refers to

Q. to you because it's recorded in Mr. O'Connell's notes as something that Mr. Connolly may have said to him about obtaining the letter?

A. I was trying to understand that particular expression 'If push comes to shove'. The only explanation I can put upon that expression, if it is to be attributed to me, is that I would have contacted David, said 'How are you keeping? Can you confirm this?' And I said 'How are you feeling?' He said 'Not too well.' I said

'I'll give you a call in a couple of days'.

Q. That was on the first occasion?

A. Yeah.

Q. Did you tell him what you were looking for on the first occasion?

A. I beg your pardon?

Q. Did you tell him what you were looking for on the first occasion, if it was around the 3rd, I am not holding you to the exact date or day, if it was around the 3rd November of 1997?

A. Yes, I told him.

Q. You told him on that occasion?

A. Yes. I told him broadly what I needed - the confirmation that the money was passed on to Fine Gael in relation to the dinner.

Q. And when you spoke to him on the 3rd November, you said he was unwell, is that correct?

A. Mm-hmm, yes.

Q. He had just finished a course of chemotherapy, is that right?

A. I believe so, yes.

Q. And was it at his home in France?

A. Yes.

Q. Do you know from your discussions with him whether he was in bed, he was confined to bed at that stage?

A. No.

Q. Were members of his family there with him at that time?

A. I can't remember.

Q. And did he have to leave his home to get to a fax machine?

A. I am not clear, I don't know.

Q. But was it on the first occasion that you asked him could he get to a fax machine or was it when you rang him on the second occasion?

A. From recollection I think he had to leave his home to get to a fax, from recollection.

Q. Would you not think that that was a fairly big thing to ask of somebody who was getting over a course of treatment to get what, on the face of it, seemed to you to be quite an unimportant matter?

A. It didn't occur to me.

Q. It didn't occur to you. So you believe that the expression "If push comes so shove" which Mr. O'Connell believes was conveyed to him by Paul Connolly, I think you see Mr. O'Connell's note there, "DFTA contacted by AP. Will confirm in writing that payment received, held some weeks, then paid with interest to Fine Gael." "If push comes to shove"." Mr. O'Connell believes that that is a note of a telephone conversation he had had with Paul Connolly and you think the expression 'If push comes to shove' is an expression which should be attributed to you, is that correct, in this context?

A. It may be, yeah, attributable to me. It may be Paul paraphrasing what I said.

Q. Yes, but you think

A. the language isn't particularly my language 'If push comes to shove'.

Q. Is it more likely David Austin's type of language?

A. It's not David's language. I think it's probably more likely Paul's interpretation of what I said to him.

Q. Well, were you conveying to Paul Connolly that you were reluctant to do this or that Mr. Austin was reluctant to do something?

A. I was conveying to Paul that, when I rang David that it wasn't appropriate to get him to do that confirmation then.

Q. And were you asked to go back to Mr. Austin?

A. I can't recall whether I was asked or I said I'd go back to him in a couple of days.

Q. Well, whoever you spoke to, did they ask you to go back to Mr. Austin within a couple of days?

A. I can't recall.

Q. You can't recall?

A. No. But it would have been something I was asked to do, so

Q. I understand that, I am just trying to understand the thinking of other people behind the matter. I take it you didn't find it a pleasant task?

A. Not particularly.

Q. Now, I suppose it would have been easier to go to Fine Gael, wouldn't it, than involve Mr. Austin at this

stage?

A. It would have been easier, if I was asked to do it.

Q. If you were asked. But did you suggest it to anyone

'Why don't you just go down to Fine Gael and sort this out, my friend's a sick man, leave him alone.' ?

A. I didn't say that.

Q. That sort of conversation never occurred?

A. No.

Q. And Mr. O'Brien had no contact or discussion with you about this matter at all?

A. I can't recall him having any

Q. you can't recall him?

A. Yeah.

Q. Can I take it he may have?

A. It's possible.

Q. It's possible.

A. Can I just say for clarification, again going back to a roadshow, Denis was the front man in terms of selling the story to the investment market and he tended not to get involved in anything other than that task. Like, the day ran through a series of meetings, various calls in various cities and when that was finished there was conference calls which went on into the night. So the actual people presenting tended to be very focused on that.

Q. On selling the product?

A. I beg your pardon?

Q. On selling the product, the IPO, that was their job?

A. Absolutely, yeah.

Q. Now, the note that's on the that is Mr. O'Connell's note of a conversation he believes he had with Paul Connolly, it records that David Austin was contacted by Aidan Phelan, I think that's correct?

A. Yes.

Q. "Will confirm in writing that payment received." I think that's correct as well, isn't it? You would have had received some comfort from Mr. Austin that the letter would be forthcoming, isn't that correct?

A. Yes.

Q. And you would have conveyed that, perhaps, to Mr. Connolly, it would appear now?

A. Yes.

Q. And then it says "Held some weeks, then paid with interest to Fine Gael." Do you know what that means?

A. I know what it says but I don't remember ever having that type of conversation.

Q. You don't ever remember having that type of conversation?

A. No, absolutely not.

Q. Did you first of all

A. I am saying with David.

Q. Mmm?

A. I am saying when I spoke to David about the \$50,000 I had no conversation about interest or weeks or.

Q. I see, I see. So I just want to be clear about this now, there was a much bigger issue that you knew about, and this was the Barry Maloney/Denis O'Brien issue, isn't that correct?

A. Yes.

Q. We'll come to deal with that. As far as you were concerned this particular issue was of no great significance, isn't that correct?

A. Yes.

Q. In fact, as far as you were concerned, you had very limited knowledge of this issue and the knowledge you had was conveyed to you by either Leslie Buckley or Paul Connolly, isn't that correct?

A. Yes, from recollection.

Q. From recollection. And it's possible you may have spoken

A. It's possible it may have come up in a meeting.

Q. It's possible?

A. Possible.

Q. And it's possible you may have had some discussion with Mr. O'Brien about it, possible?

A. Possible, yeah.

Q. Now, when you spoke to David Austin you knew that it was \$50,000, there was a dinner in New York in November and you believe that Mr. Austin corrected you erroneously in that respect to say it was December, is that right?



A. Yes.

Q. You knew that it was fundraising on behalf of Fine Gael, as far as you were concerned, isn't that right?

A. Yes.

Q. You did not know anything about sorry you knew that or you were informed that it was Telenor had made the contribution, isn't that right?

A. Yes.

Q. You did not know anything about Mr. O'Brien's role in the matter?

A. No.

Q. You did not know that on the reconciliation of an account, a running account which Telenor and ESAT Digifone had, that this was resolved around the time of the Shareholders' Agreement in 1996, you knew nothing about that?

A. No.

Q. You did not know where the money had gone, is that correct, from Telenor?

A. To David?

Q. Yes. You knew it had gone to David but you didn't know the route of it, is that right?

A. That's correct.

Q. You did not know that it had remained in Mr. Austin's account in Jersey before being passed to Fine Gael, is that right?

A. Retained? I knew he received it.

Q. He received it and it remained in his account?

A. I didn't know any of that.

Q. You didn't know that?

A. No, I didn't know that.

Q. So you didn't know that it had gone into Fine Gael purporting to be a personal donation of Mr. Austin's made payable to Mr. Frank Conroy, a fundraiser and a member of Capital Branch of Fine Gael, you didn't know any of that?

A. No. I know a lot of these things now.

Q. I understand I am just

A. just so as we

Q. At the time you contacted Mr. Austin you really you didn't know any of these things?

A. No.

Q. So do you have any idea how Mr. Connolly could have understood that the money had been received and held for some weeks and then paid with interest into Fine Gael? Can you understand how Mr. Connolly could have had that view of matters?

A. No.

Q. Mr. Austin did not tell you anything about the route of the money or what had happened to it?

A. No, absolutely not.

Q. Were you the only one who spoke to Mr. Austin, do you believe?

A. I believe, yes, at that time, that couple of days,

yeah.

Q. Yes. Well, this note is made around that time as well.

There is no date on it but it's a note that's made,

it's in a sequence of notes made by Mr. O'Connell

around that time, so it's over that I think Mr.

O'Connell believes that it was about the 4th

November sorry, I beg your pardon, it's dated 4th

November, I beg your pardon, it's dated 4th November.

So you believe you were the only one that spoke to

Mr. Austin?

A. Yes.

Q. And you have no understanding how Mr. Connolly could

have formed any understanding that the payment was held

for some held at all, to begin with?

A. No, I have no understanding of that.

Q. Whether it was for some weeks or not, but just that it

was held, you have no understanding because you didn't

know that, is that right?

A. I didn't know that.

Q. And Mr. Austin did not say that to you?

A. No.

Q. And you didn't know that money had been paid with

interest, we'll say, to Fine Gael, through Mr. Frank

Conroy?

A. No.

Q. So you knew nothing about interest being paid on the

money?

A. No, nothing.

Q. So can I take it that you are at a total loss to understand how Paul Connolly could have conveyed this to Owen O'Connell?

A. I am totally confident that David Austin never spoke to me about interest or holding money or Frank Conroy, so I am at a total loss, yes.

Q. You are at a total loss?

A. Yes, to understand that reference.

Q. Unless Mr. Connolly got that information from somebody else other than you?

A. He certainly didn't get it from me. I am confident of that.

Q. You are confident of that?

A. Yes, yeah. Because I remember that I remember speaking to David and certainly there was no discussion on those lines.

Q. Now, apart from those apart from yourself, and you were involved on the roadshow but peripherally would that be a correct way of describing it? You weren't

A. I wasn't presenting.

Q. You weren't presenting. Who else knew David Austin?

A. Denis O'Brien. Paul Connolly would have known him but primarily

Q. would Paul Connolly have been

A. he would have known David but wouldn't have had, you

know, a strong relationship with him.

Q. Would he have had a personal relationship, if I could describe it that way?

A. No.

Q. Would he be the sort of person who would have been in contact to Mr. Austin, to the best of your knowledge?

A. I would doubt it.

Q. So just to be very clear about this; you were confident that David Austin did not tell you these matters and you did not relay anything of that sort to

Mr. Connolly?

A. I am confident of that.

Q. You are confident of that?

A. Yes.

Q. Now, when the letter arrived, I think it was just a handwritten note, isn't that correct?

A. That's correct, yeah.

Q. And it's addressed "To whom it concerns". Were you in a position to tell Mr. Austin why this was needed?

A. I said it was required for the Digifone people.

Q. But did you convey to him that it seemed to have something to do with the IPO of Telecom?

A. No.

Q. You didn't?

A. No.

Q. So he was not aware, to the best of your knowledge, from you at least, that there was controversy which

required this confirmation?

A. To the best of my knowledge, no.

Q. And did he he was a friend of yours and I take it you'd know his moods reasonably well?

A. Yes, I would have.

Q. Did he appear in any way insulted or affronted in any way that there might be a suggestion that money had gone astray which was given to him?

A. No. On the contrary he was one of the reasons I was happy to go back to him, he was happy to do it, to confirm it, but right that moment, my judgement was it was the wrong time.

Q. And anyway the document read "I confirm that as Chairman of the Fundraising Committee for a dinner held in the 21 Club in New York in December, 1995 for the purpose of raising monies for the Fine Gael Party, I received a contribution from Telenor AS for the amount of \$50,000. I duly forwarded these funds to the Fine Gael Party.

Yours sincerely, David Austin."

Is that as much as you knew about the matter?

A. Yes.

Q. What's in the note?

A. What's in the note, yeah.

Q. Now, the note isn't fully complete, is it, in that you now know of the money being paid on foot of an invoice for consultancy services by Mr. Austin, isn't that

correct?

A. Yes.

Q. And you know that it went into Mr. Austin's account in Jersey, isn't that correct?

A. Yes.

Q. And that it remained there for some fifteen months or thereabouts, isn't that correct?

A. Yes.

Q. And that it was made payable to Frank Conroy to go in to Fine Gael, isn't that correct?

A. Yes.

Q. And it seems to have been represented as a personal donation by Mr. Austin?

A. It's the fifteen month thing, I am not sure how long it was there.

Q. Seventeen months?

A. I am not sure but I am just agreeing with what you are saying.

Q. You know this now from evidence which has been led to the Tribunal, perhaps?

A. Yes, okay.

Q. And I think you now know the views expressed by the then-leader of Fine Gael to Mr. David Austin when he spoke to him in February of 1996 about a potential donation, isn't that right?

A. Yes.

Q. Did David Austin tell you anything about any of these

matters?

A. No, absolutely nothing.

Q. Was Mr. Austin the type of man, in your view, at that time, who would mislead you either by some act of commission or omission?

A. No, I had no I trusted David. I didn't have any, you know, I didn't have any reason to believe he would ever mislead me by omission or commission.

Q. I take it you are fairly surprised now, are you, about this matter?

A. Yeah, I am surprised.

Q. Now, when you spoke to Mr. Austin. Either on the first occasion on the 3rd November of 1997 or on the second occasion on, you believe, the 6th November, perhaps, how long would the conversations have lasted?

A. Five minutes, ten minutes.

Q. And Mr. Austin expressed no surprise to you that he was being asked for confirmation?

A. No, no, he was enthusiastic about giving the confirmation.

Q. I see. And what reason, to the best of your recollection, did you offer him for the purpose of obtaining this particular note?

A. From the best of my recollection I said it was required because Digifone wanted to be sure it went to Fine Gael, to the best of my recollection.

Q. And do you know why it was addressed "To whom it



concerns" the note?

A. Not particularly. I may have said to him, because I was asked by Buckley to get the, I think, to get the letter, I may have suggested "Just say "To whom it concerns"" as is normal with some, you know, confirmations.

Q. Now, did David Austin understand, or if you can assist us here, whether this particular confirmation was needed for accountancy purposes?

A. No, there was no suggestion of accountancy. I never discussed I had no concept of what I now know about the invoices going backwards and forwards.

Q. And he never told you that?

A. No.

Q. And at the time Denis O'Brien didn't tell you about it either?

A. No.

Q. Or Telenor didn't tell you about it?

A. No, I never

Q. You knew nothing?

A. I had no contact with Telenor never had.

Q. So can I take it that you were perhaps somewhat at sea yourself as to the significance of obtaining this particular confirmation?

A. I was at sea, yes. The matter was treated not in as having significance to me.

Q. yes, I understand that, but

A. in fact, it was a light-hearted thing.

Q. The full picture was not being given to you?

A. No.

Q. Either on what I might describe as the ESAT Digifone or the ESAT Telecom side or on the David Austin side, isn't that correct? You were not getting the full picture?

A. That's correct.

Q. from anyone. And you were being asked to do, perhaps something which I mightn't go so far as to describe as distasteful, but perhaps an unpleasant enough thing to do, to contact a sick man?

A. I didn't see it that way.

Q. You didn't see it that way?

A. No.

Q. And you, when you received its letter, who did you give it to you?

A. To the best of my recollection, it was either Connolly or Leslie Buckley. I think I may have faxed it back to Leslie.

Q. You may have faxed it back to Leslie Buckley?

A. Yeah.

Q. In Dublin?

A. Yes.

Q. And as far as you were concerned that was the end of the matter?

A. Yes.

Q. And nobody discussed it with you after that?

A. No, that was the end of it.

Q. And may I ask you this: Why did you ask David Austin to fax it to you and not fax it to somebody in Dublin who was looking for it?

A. I asked him for the letter and just, I was in the New York Palace Hotel. I just said 'Send it to me'.

Probably the most likely reason is that at the time, you know, I had to find Buckley, find where he was.

Q. But I am just wondering about that, Mr. Phelan. This was required and the IPO was going to be priced, I think, on the 7th November, am I correct?

A. You are right, yes.

Q. This was obtained on the 6th November, isn't that right?

A. Yeah.

Q. You weren't in the picture as to the significance of this particular confirmation but you had some understanding that it was required to give comfort to the board of ESAT Digifone?

A. Yeah. It was an outstanding issue that I had to deal with.

Q. Yes. And Mr. Buckley was the person who probably wanted it at the end of the day, is that right, as the

A. I believe that's the case.

Q. Chief Executive Officer or Acting Chief Executive

Officer of Telecom. And it didn't occur to you that it should be sent straight to him at the offices of ESAT Telecom?

A. No, it didn't occur to me. I suppose I was responsible for managing this task and I just, I wanted it completed. Leslie, you know, would be always out and about and around the place and

Q. right. And Mr. Owen O'Connell was the solicitor in William Frys was the solicitor to ESAT Telecom, isn't that correct?

A. Yes.

Q. Did it occur to you that it should be sent there to Mr. O'Connell?

A. That didn't occur to me.

Q. Did Mr. Austin have any clear understanding of what this was going to be used for, do you believe?

A. I don't know whether he had a clear understanding.

Q. All he was being told by you was that the board of ESAT Digifone seemed to be a bit concerned about something, is that right?

A. Yes.

Q. And whatever about your role on the IPO, it was unrelated to ESAT Digifone, isn't that correct?

A. Yes.

Q. And he was sending it to you, who was neither a board member, is that correct, of ESAT Digifone?

A. Me?

Q. Yes.

A. no, I was

Q. and you weren't a board member of ESAT Telecom?

A. neither.

Q. What you were was an adviser to ESAT Telecom, is that correct, and an adviser to Mr. Denis O'Brien personally?

A. Yes.

Q. But not the solicitor?

A. No.

Q. Does it strike you as strange that you would be the one who, whilst I can understand was making the contact because you knew Mr. Austin personally, that the confirmation should come to you?

A. It didn't strike me as strange.

Q. Does it strike you as strange now?

A. No.

Q. In light of the fact that you were being kept out of the full picture by all sides?

A. I suppose it is strange, yeah, in the light of that, yeah.

Q. Do you think you were being used in this situation?

A. I was being used as a conduit, as a gofer.

CHAIRMAN: If Mr. Austin had still been poorly on your second phone conversation, what was your understanding of what was required of you? Would you have tried to

press him to provide the letter or would you have discussed it with either of your colleagues over in the States?

A. No, I would have gone back to Buckley or Connolly, whoever, and said "This is not on."

Q. MR. COUGHLAN: Now, I think leading up to your involvement in this issue, you are first noted in Mr. O'Connell's notes as coming to a meeting with Denis O'Brien on the 22nd October of 1997 at Mr. O'Connell's office, isn't that correct?

A. Yes.

Q. And that relates to what I'll describe as the 'Denis O'Brien/Barry Maloney issue'?

A. Yes.

Q. When were you informed about that particular issue?

A. I believe I was informed that day or very shortly before it.

Q. Before you went to Mr. O'Connell?

A. To Mr. O'Connell.

Q. And did Mr. O'Brien ask you to accompany him?

A. Yes.

Q. And had you any knowledge of the issue before Mr. O'Brien informed you?

A. No, I don't believe if I did, it would have been a day or two before.

Q. I am sorry, I accept that, but in close proximity to the 22nd October was the first time you heard about the

matter?

A. Yes, the first time.

Q. Now, I think in the summer of 1996  $\text{€}407,000$  went into a bank account in your name in the Isle of Man, isn't that correct?

A. That's correct.

Q. And that was Mr. O'Brien's money?

A. Yes.

Q. And the bulk of that came out of an account in Woodchester Bank, RINV's account at Woodchester Bank, isn't that correct?

A. Yes.

Q. And out of the money which went into the account in your name of the Isle of Man, two payments were made out of that account to Mr. David Austin, isn't that correct?

A. That's correct.

Q. One for  $\text{€}50,000$ , which was a cheque drawn on the Isle of Man bank, isn't that right, Allied Irish Banks (Isle of Man)?

A. Yes.

Q. And the other was a transfer out of that account of  $\text{€}100,000$  into Mr. Austin's account in the Bank of Ireland in Jersey, isn't that correct?

A. That's correct.

Q. Did you have any role in the drawing of the money out of the account of RINV in Woodchester in the summer of

1996?

A. I wasn't the signatory, is that ?

Q. yes.

A. I wasn't a signatory on the RINV accounts.

Q. Who were the signatories on that account, to the best of your knowledge?

A. Denis O'Brien would be one, Brendan O'Keefe would be another, that, I couldn't I would know those two.

Q. Now, were you familiar with that particular company, RINV, at that time?

A. Yes.

Q. And of the share structure of that company?

A. I'd have an idea of the share structure but I wouldn't be that

Q. whose company was it?

A. O'Brien's, effectively.

Q. And the account in the Isle of Man which was opened in your name, I think was that opened for the purpose of receiving this money of  $\text{€}407,000$ -odd?

A. It was, yes.

Q. Did you open that account of your own volition or were you asked to open it?

A. I was asked to open it.

Q. By whom?

A. By Denis O'Brien.

Q. And I think that account dealt solely with Mr. O'Brien's money, isn't that correct?



A. Yes.

Q. Was anyone else aware that an account had been opened in your name which was, in effect, Mr. O'Brien's account?

A. I doubt it. I'd say only Denis O'Brien.

Q. Only Denis O'Brien and yourself?

A. And myself, right.

Q. What did Mr. O'Brien say to you when he asked you to open the account?

A. He said he was owed money from RINV and he wanted to take it out. His companies had a habit of having a high appetite for cash and he wanted to ringfence this money which was owed to him.

Q. Perfectly understandable in ordinary business terms, of course, but he had accounts in Woodchester, didn't he, personal accounts?

A. Yes.

Q. In fact, we'll come to those later. But he certainly had a number of personal accounts in Woodchester into which the money could easily have been transferred, isn't that correct?

A. That's correct.

Q. Do you know why or were you offered any explanation why you were asked to open an account in your name to receive Mr. O'Brien's money in the Isle of Man?

A. No.

Q. Did you seek any explanation?

A. Not no.

Q. Was this a regular business practice of Mr. O'Brien and yours?

A. No.

Q. Had it ever happened before?

A. No.

Q. Did it happen subsequently?

A. No.

Q. This is the only occasion?

A. This is the only occasion. I would say that, you know, Mr. O'Brien's affairs which are not part of this inquiry, he has other interests that would take him out of Ireland in terms of banking.

Q. Yes, I am

A. just to say that all his affairs are not conducted in Ireland. Just to

Q. just be clear about one thing, Mr. Phelan, and I know you don't mean anything disrespectful about the matter, all of Mr. O'Brien's financial affairs may have some relevance to the inquiry.

A. I accept that.

Q. May have.

A. I am just saying that as a clarification point, that he has other outside interests out of Ireland.

Q. Yes, I think that

A. which would carry

Q. I think he gave evidence about that himself. But

the account out of which this money came was an account in Woodchester Bank, isn't that correct?

A. That's correct.

Q. In Dublin.

A. Yes.

Q. And I think you will see that there was withdrawn out of the account on the 3rd July, 1996, there are other transactions on the account, obviously, but this particular withdrawal was of £407,000, isn't that correct?

A. Yes.

Q. And that was withdrawn to Allied Irish Bank in Dublin, do you see that?

A. I do, yeah, I see that.

Q. Did you give any information to Mr. O'Brien as to the name and account number of the account you had opened in the Isle of Man?

A. I would have given routing instructions, yeah.

Q. Routing instructions?

A. Yeah.

Q. And to whom would you give that information?

A. Either Denis O'Brien or Brendan O'Keefe.

Q. And the one thing that you are certain of is that you had no signing rights or rights to give instructions on this particular account in Woodchester?

A. I am certain of that.

Q. You are certain of that. You did have signing rights

and you had rights to give instructions in respect of other accounts, isn't that correct, but you are certain on this one?

A. I am as certain as well, I asked the company just for my own benefit.

Q. To double check it?

A. And they informed me of that. I wasn't a director.

Q. And what routing instructions did you give to Mr. O'Brien, or somebody else on his behalf? And if we could just refer to the other person at this moment as 'somebody else' because we may have to put another person on notice and I don't want people's names being mentioned who haven't been involved in the affairs of the Tribunal already, is that okay?

A. Yeah.

Q. What routing instructions did you give?

A. What do you mean? Account numbers?

Q. What physically I take it there must have been a piece of paper, you'd have written down the name of an account, or an account number, banking code, sort code, address?

A. Yeah, I would have given that type of information.

Q. That's the type of information you'd have given?

A. Yeah.

Q. And would the information have, to the best of your recollection, have been Allied Irish Bank (Isle of Man), whatever the address in the Isle of Man is,

perhaps the sort code for that particular branch and  
the account number into which the money was to be paid?

A. That type of information, yeah.

Q. Would that have been it?

A. Yes.

Q. Now, this was the only time up to this that Mr. O'Brien  
had asked you to do this, isn't that correct?

A. Yes.

Q. And, in fact, he didn't ask you to do this subsequently  
either?

A. No, and I don't believe no, just

Q. This is the one occasion?

A. I believe so, yes, it's the one occasion. You know,  
his affairs are quite widespread, I mean, just from  
memory this is the one occasion.

Q. Yes, I understand. I just want to be clear, as far as  
you were dealing with his affairs, this is the one  
occasion that you can remember you being asked to do  
this, is that right?

A. Yes.

Q. Now, you don't know what specific instructions were  
given to Woodchester because you weren't operating this  
account, isn't that right?

A. Yes, I wasn't operating the account.

Q. But I take it that from your general understanding of  
business, it perhaps would not be unusual if money was  
going from Woodchester to Allied Irish Banks in the

Isle of Man, that it would go through perhaps the foreign exchange department or the international section of Allied Irish Banks in Dublin, that perhaps would not be an unusual thing to happen, that would be the route of it?

A. It probably would be the route of it.

Q. Now, from the information supplied by Allied Irish Banks in the Isle of Man, the money comes in. You can see the  $\text{€}407,000$  coming in, isn't that correct, on the statement? Some of it is obscured at the moment but there is I think you know that there is a legend on that which indicates that the money is coming from somewhere else, isn't that correct?

A. That's right, yes.

Q. And we'll get the right one up now in a moment. I think it's described as Diest or something like that?

A. Diest. D-I-E-S-T.

Q. D-I-E-S-T, is that it?

A. Yeah.

Q. I just can't get it at the moment but we'll put it up in a moment. Now, do you know do you know anything about that particular entity or company?

A. Yes.

Q. You do?

A. Yes.

Q. And what is it?

A. It's a trading company.

Q. It's a trading company?

A. Yes.

Q. Whose trading company?

A. It's owned by I had an interest in it at one stage.

Q. At this time?

A. Yes.

Q. How big an interest had you got in it?

A. I think from recollection around 30% interest in it.

Q. And who were the other people that had an interest in it?

A. They were just other associates, business associates.

Q. Was Denis O'Brien one of them?

A. No, no. Totally unconnected to any matters in this.

Q. Right. Now, is this a trading company which operates here?

A. No.

Q. Where does it operate?

A. Mainly it imports sports gear, sports clothing from the Far East and sells it in Europe.

Q. And do you know how the money from Woodchester ended up, apparently, going to this trading company?

A. Well, I would say I gave the routing instructions for Diest because I didn't have an account set up at the time for Denis. It probably went straight in and out.

Q. I am confused. Perhaps I'll put the documents up in the afternoon, Sir, and we'll go through this, but as far as you were concerned, you gave routing

instructions to Mr. Denis O'Brien or somebody else on his behalf?

A. Or somebody else, yeah.

Q. And is it now the case that the routing instructions you gave were not to Allied Irish Banks in the Isle of Man?

A. No, I'd say they were to the Allied Irish Banks in the Isle of Man but to the account of Diest.

Q. To the account of Diest?

A. Yeah.

Q. I see. And then an instruction would have to have been issued by you to transfer that to this account?

A. To Diest, into this Denis O'Brien account, the Aidan Phelan/Denis O'Brien account.

Q. Well, the account was in your name?

A. Yeah, I was surprised when I discovered the documentation, I was surprised that Diest were there.

Q. Well, just to be clear about this, this account was opened in your name purely for the purpose of receiving Mr. O'Brien's money?

A. Yeah.

Q. I take it the bank were not informed that this was a Denis O'Brien account?

A. No.

Q. But that the routing of it was into another account, a trading company in which you had an interest, and then it was transferred from that account into this



particular account, this dedicated account, is that

right?

A. Yes.

Q. And it's your belief that you would have given the

instructions to route it through the Diest account in

the Isle of Man because at the time you had not set up

this particular account, is that correct?

A. Yes.

Q. What date was this account opened? I think it appears

to be the 10th July, isn't that correct? It seems to

be the opening balance you see there, 10th July, the

opening balance is zero. You see that at the top of

the sheet?

A. Okay, yeah.

Q. And then the money comes in. There are drawings and

the money comes in all on the same day, isn't that

correct?

A. Yeah.

Q. And the money seems to have left Woodchester on the 3rd

July, is that correct?

A. Yes, it seems to have, yeah.

Q. And when did Mr. O'Brien ask you to set up this

particular dedicated account?

A. It would have been around about the time he gave the

instruction to transfer it out of Woodchester.

Q. Around the 3rd?

A. Around the 3rd, yeah.

Q. And you just didn't get around to getting this account opened until sometime around the 10th, is that correct?

A. Yes. It would have taken probably a couple of days to get

Q. to organise the paperwork?

A. Well, yeah. I actually can't recollect why it didn't just go straight into AIB. I would have had a relationship and I just can't recollect why that is.

I was surprised when I saw the documentation that Diest was involved at all.

Q. In any event the money was you were asked to open an account and the money was received. Were you told anything else about the account at that stage?

A. Not at that stage.

Q. Were you what was the next thing that happened about it?

A. Denis asked me to make a few payments.

Q. Make a few payments?

A. Yes.

Q. What was the first payment? You needn't mention other people's names at the moment. It looks like it was the third payment was the one that was made to Mr. Austin, isn't that correct, but they all seem to be on the same day, the 10th July?

A. I just don't have a copy of that statement.

Q. I'll just give you a hard copy of it?

A. Yeah, if you don't mind. (Document handed to

witness.) Yeah, 10th July was the first.

Q. And that was the a payment of how much?

A. 50,000. Are we talking about the David Austin?

Q. To David Austin?

A. 50,000.

Q. And how did that come about?

A. Denis asked me to get a draft of  $\text{€}1/250,000$  Irish for David Austin. He was considering buying a house from him and this was a down payment and he had yet to agree the price.

Q. And he told you this in when?

A. It must have been a day or two before this.

Q. And he asked you to get a draft for  $\text{€}1/250,000$  for him, he was considering buying a house?

A. Yeah.

Q. And this was a down payment?

A. A down payment. Well, he was going to buy a house he said. He was just negotiating the price.

Q. And that was by way of a draft or banker's cheque?

A. Yes.

Q. And then on the 19th July something happened as well, isn't that correct?

A. That's right, yes.

Q. What was that?

A. There was a telegraphic transfer of 100,000 to David Austin.

Q. Yes. How did that come about?

A. Denis told me he'd agreed the final price at 150,000 for this house in Spain, could I send it to David, which I did.

Q. Which you did. Did you know anything else about the matter?

A. no.

Q. at that time. You just received these instructions from Mr. O'Brien?

A. Yes.

CHAIRMAN: It's just on a quarter to, Mr. Coughlan. Is this a suitable time? We will resume your evidence, Mr. Phelan, at two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 P.M.:

CONTINUATION OF EXAMINATION OF AIDAN PHELAN BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Phelan, before lunch I think we were looking at the account which was opened in your name in Allied Irish Banks (Isle of Man). And what address was given for that account, Mr. Phelan?

A. That was an address in Cape Cod in Hyannis.

Q. Is that an address of yours?

A. I used it as an office from time to time. An associate of mine and myself used it for trading stuff in America.

Q. For which?

A. I was also engaged in other business activities in relation to, you know, container trading.

Q. yes?

A. of sports goods. And we used that as a base in America.

Q. And was that the address that was used on the account of Diest trading in the bank in the Isle of Man?

A. I'd have to check. It's possible.

Q. And why was that given to the bank for this particular account?

A. Because any accounts that I was involved in, my were set up under that address.

Q. In the Isle of Man bank?

A. Yes.

Q. Why was that?

A. Well, I used the Isle of Man for that container trading business and that's where we had our HQ.

Q. Where, in Hyannis Port?

A. In Hyannis, yes.

Q. Is that right?

A. Yes.

Q. But was this an accommodation address or was there a staff actually there?

A. No, there was a secretary there.

Q. A secretary?

A. Yes.

Q. Whose secretary was she?

A. She was retained by my associate.

Q. She was retained by your associate?

A. Yes.

Q. And did you instruct the bank to open this particular account giving that address for the purpose of opening this account?

A. Did I ?

Q. Instruct the bank to use the address, 32 Pitcher's way, Hyannis, Massachusetts?

A. Yes.

Q. You instructed the bank to do that?

A. Yes.

Q. And did bank statements go to that address?

A. Yes.

Q. Including the bank statements for this account?

A. Yes.

Q. And when the account was opened or when you were asked to open the account, was information were you given by Mr. O'Brien?

A. Sorry

Q. Why did he ask you to open an account? Was it just to receive some money?

A. Yes.

Q. That's all?

A. Yes.

Q. He didn't tell you the purpose of it or anything?

A. No, he wanted to take the money out of RINV and hold it and he then was going to decide what he was going to do with it.

Q. Yes, I see. Well, the money came in on the 10th July, isn't that correct, 1996?

A. Yes.

Q. And on the same day, there was i;½145,000 drawn on that account, isn't that right?

A. I'll just check to see. I am just trying to locate the statement here. Bear with me a second, please.

Q. Yes, indeed. I have a copy, if it's of any assistance to you. (Document handed to witness.) So on the same day, there is i;½145,000 drawn. On the 18th July, some eight days later, there was another 40,000 drawn. On the 19th July the next day, there was 100,000 withdrawn, and that was the i;½100,000 to Mr. David Austin, isn't that correct?

A. Yes.

Q. On the 26th July, there was another 27,000?

A. Yes.

Q. And 95-odd thousand, isn't that right?

A. Yes. I think the 27 was on the 19th, yeah.

Q. On the 19th, I beg your pardon, you are probably right. And then 95,000 on the 26th?

A. Yes.

Q. So by then it was down to a penny, isn't that correct?

A. Yes.

Q. And then in May of 1997 there was  $\text{€}1,300$  lodged to the account. That's interest applied to it, isn't it?

A. Yes.

Q. And then that accumulated interest of about  $\text{€}1,400$  was drawn on the 12th May, 1997, isn't that correct?

A. Yes.

Q. So all of the activity in real terms took place on the account between the 10th July, 1996 and the 29th July, 1996, would you agree?

A. Correct, yes.

Q. And you were asked to set this account up around the 3rd July, you believe?

A. Yes.

Q. And in respect of each drawing on the account, did you receive a specific instruction from Mr. Denis O'Brien?

A. Yes, I did. There was some mix-ups on the 95, I think you are aware of.

Q. In '95?

A. On the 95,000.

Q. Yes, I am not going to deal with that at the moment?

A. Well, I am just saying in relation to specific instructions.

Q. You didn't receive any specific instructions?

A. No, I received instructions on all the other payments. There was just a mix-up on that one.

Q. There was a mix-up on the  $\text{€}95,000$ ?

A. Yes.



Q. Very good. We can deal with that again. I don't want to deal with it right now, if that's all right with you?

A. Yeah, fine.

Q. But you received apart from the 95,000, you received specific instructions and you didn't know before you received the instructions what was to be done with any of the money in this account, is that right?

A. That's correct, yes.

Q. Now, in relation to the payments which were made to Mr. David Austin on the, what you were told by Mr. O'Brien at that time can I take it that you had no further activity in relation to the particular transaction Mr. O'Brien described to you, that is the purchase of a house from Mr. Austin, until you became involved through your firm towards the end of 1997/the beginning of 1998, would that be correct?

A. Yes. In '97 David spoke to me about the house, sometime in the middle of '97 but I had no effective dealings with it until in around December '97.

Q. Isn't that correct?

A. Yes.

Q. And you didn't know anything further other than that you had received instructions to transfer the money as you had?

A. And apart from the fact that O'Brien told me he was buying a house from David Austin, yes.

Q. Yes.

A. That's the only

Q. Now, I think you now know that Mr. Austin opened a specific account into which the proceeds, this  $\frac{1}{2}$ 150,000 went, isn't that correct?

A. Yes.

Q. And that the opening balance on Mr. Austin's account in Jersey was the  $\frac{1}{2}$ 100,000, isn't that correct?

A. Yes.

Q. The  $\frac{1}{2}$ 50,000 had gone into another account of his and then it was transferred to this particular account which was opened to receive that money?

A. Yes.

Q. Now, I think you now know that out of that account, of this  $\frac{1}{2}$ 150,000, Mr. Austin made a payment to Mr. Lowry of  $\frac{1}{2}$ 147,000, isn't that correct?

A. Yes.

Q. Did you know anything about that at the time?

A. No.

Q. Did Mr. Austin ever tell you anything of the sort?

A. No.

Q. And Mr. Austin never informed you that he had made a payment or made a loan to anybody, is that correct?

A. No, he never informed me.

Q. Did Mr. Austin when did Mr. Austin or did he ask you would you act as one of the executors in his estate?

A. From memory, very shortly before he died, possibly, like two/three weeks, shortly before he died.

Q. Two/three weeks. And I think it was in your role as executor you became familiar with the state of Mr. Austin's accounts, isn't that correct?

A. Correct.

Q. Did you know anything about his accounts before that?

A. No.

Q. You had never given him any advice, financial or accounting advice or anything that have nature?

A. No financial or accounting advice. We talked about technology stocks quite a lot but that was the main business discussion.

Q. And in 1997, at the time of the IPO of ESAT Telecom come, you were unaware that Mr. Austin had made a payment to Mr. Lowry and that the money had come back, isn't that correct?

A. Correct.

Q. And I think in the course of discussions surrounding the Barry Maloney/Denis O'Brien controversy you had a discussion with Mr. Owen O'Connell when he inquired as to whether there were any other significant accounts of Mr. O'Brien's other than those that had been looked at in Woodchester, isn't that correct?

A. Yes.

Q. And I think Mr. O'Connell had had a discussion with the firm of American lawyers, according to his own note,

before he spoke to you, isn't that correct?

A. Yes.

Q. I think you informed Mr. O'Connell that there were other accounts dealing with matters like household expenses, some salary payments and the payment of credit cards, matters of that nature, isn't that correct?

A. Yeah, I don't specifically recall that, you know, that conversation those I have no reason to disbelieve that that note is incorrect but I don't recall those discussions.

Q. And can we take it that you knew that Mr. O'Connell was looking at Mr. O'Brien's accounts for a specific purpose, to identify payments of  $\geq 25,000$  plus?

A. I knew that he was carrying out inquiries and he had retained he had inquired through auditors and I wasn't familiar with the full scope of his inquiries or the Terms of Reference.

Q. You are saying that you didn't know ?

A. Sorry I'll just add to that that in relation to the Woodchester, I was aware that he was looking at Woodchester payments in excess of 25,000.

Q. Yes. And it related to a specific matter which was being dealt with to see if any payments had gone to Mr. Michael Lowry or somebody on his behalf or to somebody connected with the award of the licence to ESAT Digifone, wasn't that correct, you knew that?

A. I knew that he was investigating payments to Michael Lowry or Streamline.

Q. And can we take it that you Mr. O'Connell's note is correct when he records that you did not inform him of this particular account?

A. It is correct.

Q. Which was a pure Denis O'Brien account, wasn't it?

A. Yes.

Q. Can I ask you why you didn't inform Mr. O'Connell?

A. Because I didn't recall that account at the time.

Q. You didn't recall the account at the time?

A. Yes.

Q. The account was closed on the 17th May, 1997, isn't that correct?

A. Yes.

Q. And I think you had other accounts with the address at Hyannis Port with this particular branch, isn't that correct?

A. Correct.

Q. And did you close all accounts in May of 1997 with Allied Irish Banks in the Isle of Man?

A. I think so. I mean the records are.

Q. And did you give as the reason for closing those accounts that you were returning to live in the United States?

A. I did, yes.

Q. And, of course, the closing of all your accounts

included in your name included this account,

isn't that right?

A. Yes, correct.

Q. And did you also inform the bank that any information or correspondence should be directed to Deloitte & Touche in the Isle of Man?

A. Yes.

Q. And it would be collected by you or you'd arrange to have it collected, if any arose?

A. Yes.

Q. And that was about five and a half months or thereabouts before you had the discussion with Mr. O'Connell, isn't that correct?

A. That's correct.

Q. And are you saying that you didn't remember the account when you spoke to Mr. O'Connell?

A. Yes. The account the Denis O'Brien account effectively ceased in, back in July '96.

Q. Mm-hmm.

A. Like, I had some other activities which were nothing to do with Denis O'Brien which maybe went into '97.

Q. But you did remember sending  $\frac{1}{2}$ 150,000 to Mr. David Austin, didn't you?

A. To purchase the house.

Q. You remembered it?

A. I remembered. At the time Owen raised these queries, they weren't that wasn't significant to me.

Q. Why wasn't it?

A. Because, I mean, Denis O'Brien had many transactions.

He bought a lot of properties. It wasn't particularly

significant.

Q. Were you aware that Mr. David Austin was friendly with

Mr. Michael Lowry?

A. No.

Q. Did you become aware of that?

A. At the time of his death, I did.

Q. And that was in 1998?

A. Yes.

Q. And how did you become aware of that?

A. I met Michael at the funeral.

Q. Did you ever see him anywhere else with Mr. Austin?

A. I can't recall, no, no.

Q. Did he ever visit Mr. Austin in hospital?

A. Actually sorry, can I correct that? I did meet him at

the time he visited David in hospital, that's correct.

Q. Where was that?

A. In London.

Q. When was that?

A. It would be a couple of weeks before he died.

Q. Going back to the account and the discussion that you

had with Mr. O'Connell, I think it's correct to say

that Mr. O'Connell had access to information which had

been supplied by Woodchester Bank?

A. Yes.

Q. Which, I think, had been obtained by Ms. Ann Foley for him, would that be correct?

A. Correct.

Q. And I think in relation to the information, did he have a discussion with Ms. Ann Foley when she informed him of what the various transactions on the account related to or did he have a discussion with you?

A. I think from memory he had a discussion with Ann Foley.

Q. With Ann Foley.

A. And he may have deferred one or two things to me.

Q. To you. So you knew he was looking at larger transactions on Mr. O'Brien's Woodchester accounts, isn't that correct?

A. Yes.

Q. And he was given an explanation in respect of all of them, isn't that correct?

A. I believe so, yes.

Q. And you knew that the reason he was looking at them was to see if there was any substance to the suggestion that  $\frac{1}{2}$ 100,000 had been paid to Michael Lowry, isn't that correct?

A. Yes, yes, it is.

Q. Either to Mr. Lowry directly or through some other vehicle?

A. Or Streamline, yes.

Q. Or Streamline, or whatever?

A. Streamline was Michael Lowry I think it's his



company.

Q. Did you have any discussion with Mr. Denis O'Brien before you spoke to Mr. O'Connell about these matters?

A. I can't recall. I may have I can't recall it.

Q. But an explanation was sought and given in respect of the larger transactions on the Woodchester accounts, isn't that correct?

A. Yes.

Q. And none of them appeared to have any relationship with Mr. Lowry. Some of them were investment matters of a personal nature, purchasing of a site in Portugal was another matter that we dealt with Mr. O'Brien, matters of that nature, isn't that correct?

A. Yes.

Q. And are you saying to the Tribunal that you did not remember this particular account and two significant payments which were made out of it to somebody who was unconnected in business terms with Mr. Denis O'Brien at the time you spoke to Mr. O'Connell?

A. Yes.

Q. You forgot about it?

A. I didn't recall it, I didn't remember it.

Q. You didn't remember it?

A. Yes.

Q. But you remembered at the time you spoke to Mr. O'Connell, I suggest to you, that  $\frac{1}{2}$ 150,000 had gone to Mr. Austin, isn't that right?

A. Yes, I knew Denis bought a house from David Austin.

Q. You knew  $\text{€}150,000$  had gone to David Austin at that time?

A. Yes.

Q. You never told Mr. O'Connell about it?

A. No, I didn't raise it with him, no.

Q. You also knew at the time you spoke to Mr. O'Connell that Mr. Austin entered the picture again because he was connected with the political donation, isn't that correct?

A. I knew, yes, he was connected with it.

Q. Why didn't you inform Mr. O'Connell that an account had been opened in the Isle of Man, a Denis O'Brien account had been opened in the Isle of Man, and out of that there were payments but, significantly, there was  $\text{€}150,000$  paid to Mr. Austin. Why didn't you tell that to Mr. O'Connell?

A. It just didn't occur to me at the time. I didn't I was looking for Lowry. It didn't

Q. you were looking oh, I see, you were looking for a bank statement and a cheque which would show Lowry or Streamline, is that right?

A. Yes.

Q. I see. Why then were explanations afforded to Mr. O'Connell in respect of the other transactions on the Woodchester accounts?

A. Well, because he asked for them.

Q. Yes, he was looking for information, isn't that right?

A. Yes.

Q. And you knew, whether you remembered the account or not, you knew two payments had gone to Mr. Austin, one for  $\frac{1}{2}$ 100,000 and one for  $\frac{1}{2}$ 50,000 and you did not tell Mr. O'Connell about it?

A. Yes, it didn't just seem significant to me.

Q. It didn't just seem significant to you?

A. Yeah.

Q. I see.

A. When the whole Barry Maloney thing, the 100,000 arose in the first place, I asked Denis O'Brien about it and he assured me there was no substance to it.

Q. Denis O'Brien did?

A. Yes.

Q. You were aware that controversy surrounded the conversation to the extent that there was a suggestion of an intermediary being involved, isn't that right?

A. Yes.

Q. And I think you would have been aware that the expression "Stuck with an intermediary" was used at the time?

A. That was mentioned at one of the meetings I was at.

Q. With Owen O'Connell?

A. I think the 30th meeting.

Q. Was that the meeting in Boston?

A. No. There were

Q. sorry, this is when you went with Mr. Buckley and Mr. Callaghan, directors of ESAT Telecom, to see Mr. Owen O'Connell, isn't that correct?

A. Yes.

Q. Now if we just look at that note, if we may, for a moment. I think it's at tab 3. Do you have that, Mr. O'Connell's note of the 30th?

A. I do, yes.

Q. I think you attended the meeting, is that correct, John Callaghan, Leslie Buckley and Aidan Phelan?

A. Yes.

Q. What were you doing at the meeting?

A. I was asked to attend by Denis O'Brien. I was going to America, I'd say, the following day to join him in Boston and to just see I think that meeting followed, possibly a board meeting, I think, of Digifone.

Q. Yes.

A. And he asked me to go along and see were these allegations, you know, being taken seriously what was the state of play with them.

Q. What allegations are you talking about?

A. The whole Barry Maloney allegations about payments.

Q. But can I just ask you; Mr. O'Brien asked you to go to a meeting with Owen O'Connell, John Callaghan and Leslie Buckley, is that correct?

A. Yes.

Q. As I understood it from the evidence of Mr. Callaghan and Mr. Buckley, the purpose of this meeting was to bring to the attention of the solicitor for ESAT Telecom what was happening at the ESAT Digifone side of things, isn't that correct?

A. Yes.

Q. You were not a director or an executive of ESAT Telecom, were you?

A. No.

Q. You were Mr. O'Brien's personal adviser in this respect?

A. Yes.

Q. And he asked you to go to the meeting?

A. Yes.

Q. Where was he at the time he asked you to go to the meeting?

A. I think he was in America.

Q. And what did he say to you?

A. I can't recall what he said. He just told me to go along to the meeting. I didn't really participate in the meeting.

Q. Did Mr. O'Connell or Mr. Buckley or Mr. Callaghan have any difficulty with you being present?

A. I don't believe so, no.

Q. Were you normally present at meetings between directors of ESAT Telecom and the company solicitors?

A. No, I wouldn't, no.

Q. You were present with Mr. O'Brien

A. I would be

Q. on the 22nd, isn't that correct?

A. Yes.

Q. When ESAT Telecom business was being discussed, isn't that correct?

A. Yes.

Q. So you were being sent along by Mr. O'Brien for what specific purpose? What did he say to you, Mr. Phelan?

A. I have to say I can't recall what he asked me to do at the meeting. I believe he was in America.

Q. Would it seem reasonable that you were there to keep him informed?

A. That would seem reasonable, yes.

Q. Would you think?

A. It seems reasonable.

Q. That you were effectively his eyes and ears for this purpose?

A. Yeah, I think that's reasonable.

Q. Now, can I take it that a number of matters were discussed, some of them of a technical nature relating to the IPO, isn't that correct? Item number 2, for example "Letter from ESAT Digifone board re concerns on Prospectus DCS 1800." I think we have had evidence from other directors that this was unrelated to the issue between Mr. Maloney and Mr. O'Brien.

Item number 3 then "Payments.

Denis O'Brien/Barry Maloney discussion and Fine Gael -

intermediary - Woodchester? Other 100K. Payment stuck, etc. Per Fergus Armstrong letter. Arve check

on re Fine Gael money. Inquiry of DFTA. JC -

Telenor insisted and JC/LB agreed to consult William

Fry's (per Fergus Armstrong). Common directors.

Statement from Woodchester definitely needed. Payment

made and getting stuck. Denis reference in board

meeting to Woodchester as intermediary. Had thought

about making payment but chose not to do it. (Per John

Callaghan).

Michael Lowry no expectation of payment, never any

discussion. Second 100K. Process of further

investigation. Prospectus being issued Tuesday week,

printed Monday week. Owen O'Connell letter held till

Monday. Owen O'Connell consider matter Friday, consult

Chairman Saturday, write board Monday. John Callaghan

notification quote from 2 x statements." I don't think

that's of any particular significance.

So can I take it at that meeting you were fully aware

of the matters which had arisen at the board meetings

of ESAT Digifone - whether they were actual board

meetings or not - previously about this discussion and

an explanation being offered by Mr. O'Brien about

thinking about making a payment, not going ahead with

it, discussion about Woodchester, another  $\frac{1}{2}$ 100,000, an

intermediary and a payment getting stuck, do you

remember all of that?

A. Yes.

Q. So can I take it that the information which was being

conveyed to Mr. O'Connell was that these discussions

had taken place, they were causing concerns, there was

going to be a question and answers session coming up in

a few days time, isn't that correct?

A. Yes.

Q. Where Mr. O'Brien would be asked about these matters,

isn't that correct?

A. Yes.

Q. And can I take it that you knew from what was said or

you would have known yourself as a professional person,

that looking at the bank accounts was a necessary

ingredient in the process that was being carried out?

A. Yes.

Q. And I think you knew that Mr. O'Brien had personal

accounts and perhaps company accounts in Woodchester,

isn't that correct?

A. Yes.

Q. And his personal accounts had money in them, isn't that

correct?

A. Yeah.

Q. At that time?

A. Yes.

Q. From the statements we have seen?



A. Yeah, yeah.

Q. And, in fact, from the statements we have seen, his personal accounts had money in them in 1996, isn't that correct?

A. Yes, I believe so.

Q. The question of an intermediary and money getting stuck was a big issue, wasn't it?

A. It was an issue, yeah.

Q. So can I take it that apart from assisting in ascertaining whether a payment had been made directly to Mr. Lowry or to Streamline, one also had to have an eye open to see if an intermediary or some other individual was involved or could have been involved in the matter, isn't that right?

A. Yes. I think the intermediary was everybody had the view it was Woodchester.

Q. Is that right? I thought it was Mr. O'Brien was the one that had that view?

A. Possibly, possibly.

Q. What did you think of that as an explanation, Woodchester being an intermediary?

A. I think that he had his accounts there in the first place. I didn't really go into it.

Q. You didn't go into it?

A. No.

Q. But if you were using language in its ordinary sense I am not suggesting that Mr. O'Brien was right

or wrong about using the term 'intermediary' for Woodchester but using it in its ordinary sense, would you, as an accountant, not consider it a wise thing to do, would be to look to see if money had gone anywhere else which could have gone to Mr. Lowry or to Streamline, seeing as the spectre of an intermediary had raised its head?

A. It would have been wise, yeah.

Q. And you knew that?

A. Yes.

Q. And can I ask you then, if you knew all of that at that time why didn't you inform Mr. O'Connell of the account in the Isle of Man?

A. It didn't occur to me.

Q. It just didn't occur to you?

A. No.

Q. I must suggest to you, Mr. Phelan, that that explanation sounds extremely hollow. It didn't occur to you?

A. No, it didn't occur to me.

Q. A professional man used to dealing with accounts.

A. It didn't occur to me.

Q. And it didn't occur to you in the context that you were asked, for the first time and for the last time by Mr. Denis O'Brien, to open an account in your name in the Isle of Man, or offshore, perhaps it wasn't specified, but offshore, is that correct?

A. It was offshore, yeah.

Q. But that's what you were asked to do?

A. Yes.

Q. And out of that account two payments were made to Mr. David Austin, isn't that right?

A. Yes.

Q. And at the same time, Mr. O'Brien had accounts in Woodchester which had money in them and could have been used to buy an apartment or a house in Spain from Mr. David Austin, isn't that correct?

A. That's correct.

Q. Quite openly and quite up-front?

A. Yes.

Q. And there was no reason why that could not have been done?

A. There is no, there was no reason.

Q. Would it be reasonable to suggest that the reason why you were asked to open this account offshore in your name and to make these payments to Mr. Austin was for the purpose of concealing the whole transaction?

A. No.

Q. You don't think that would be reasonable to suggest that?

A. No.

Q. Bearing in mind that Mr. O'Brien had plenty of funds in his accounts at Woodchester to carry out the transaction discreetly, but openly; you wouldn't agree?

A. No.

Q. What explanation could you offer for the opening of this account?

A. Denis wanted to buy a house from David Austin, who was offshore himself and didn't want to be paid out of Ireland.

Q. Why not?

A. I have no idea.

Q. What would have been what was the difficulty? Was there a difficulty about doing that, as you saw?

A. It - I wouldn't see a difficulty doing it but I was you know, Denis instructed me to do

Q. I accept that.

A. do it this way.

Q. I accept that. I am not doubting you in relation to that at all. There was no difficulty in Mr. O'Brien buying a house from Mr. Austin using funds he had here in Ireland, isn't that correct?

A. Yes.

Q. There was no issue of exchange control or anything of that nature involved?

A. No.

Q. And, in fact, many Irish people purchase houses in Spain, isn't that correct?

A. Yes, a lot of properties use offshore vehicles.

Q. I'll come to that in a moment. The vehicle whereby the property is held is a transaction that occurs

subsequently whereby shares in the company are held and the company would be sold and purchased thereon.

A. Like, at the time that transaction was going on I had no sense of the conveyance, how it was going to happen until quite a bit later.

Q. Yes, I'll come to that in a moment. I am not dealing with the issue of how the property is held by offshore vehicles. What I am asking you about is this: that as it was explained to you, all that was happening here was a simple transaction of buying a house in Spain, isn't that correct?

A. Yes.

Q. There were funds available in Mr. O'Brien's accounts to do that?

A. There would be, yes, yeah.

Q. And all that was required was transfer of the funds out of one of Mr. O'Brien's accounts to even Mr. Austin's account offshore, isn't that correct? There was no difficulty about that?

A. There wasn't any difficulty.

Q. And then whatever niceties were involved in relation to the vehicle for holding the property, would be sorted out there and then or sometime afterwards, pretty straightforward stuff?

A. Pretty straightforward, yeah.

Q. But you were asked to set up an account in the Isle of Man in your name, isn't that correct?

A. Yes.

Q. Did Mr. O'Brien know that at the time you were using an address in Hyannis Port in relation to your accounts in the Isle of Man?

A. I'd say no.

Q. So you were asked to set up a specific account. Were you asked to do it in your name?

A. I believe so, yes.

Q. And you were not told at that time how the monies were going to be dispersed out of the account?

A. No.

Q. And then you receive into the account, or the bank receives into the account, Mr. O'Brien's money, isn't that correct?

A. Yes.

Q. And it was out of that account, which completely concealed the true identity of the account, the real account owner, isn't that correct?

A. yes.

Q. that payments were made to Mr. Austin?

A. Yes.

Q. And can we take it that there can be no doubt about it but that Mr. O'Brien did not want his name on an account in the Isle of Man?

A. It's reasonable to assume that. I you know, it wasn't a huge discussion point.

Q. You knew what instructions you were getting?

A. Yes.

Q. And did it not at any stage appear to you to be unusual?

A. It didn't appear to be unusual.

Q. What was usual about it?

A. There was nothing usual about it but it wasn't something that stuck out in my mind as being, you know, something particularly unusual.

Q. Well, you could have

A. dealing with Denis you know, dealing with Denis, anything you know, anything can happen in terms of what he might decide to do.

Q. I see.

A. Sorry, that's I don't mean to be humorous

Q. I know you are being serious?

A. It's entrepreneurial.

Q. But I just want to be clear about this; you were operating on instructions here?

A. Absolutely.

Q. Were you ever asked to open an account in your own name in Ireland for Mr. O'Brien?

A. I believe I was, yeah, yes. Now, I would have yeah, yes.

Q. In your own name?

A. Yes.

Q. To receive Mr. O'Brien's money?

A. Yeah, to deal with yeah, yes, I believe I was.

Q. When would that have been?

A. I'd have to check that particular one.

Q. That's fair enough. There is no difficulty in checking.

A. I mean, we can

Q. There is no difficulty?

A. revert on that.

Q. Did that happen on more than one occasion?

A. There may have been a situation where one of the secondary offerings where stock was sold and I would have just disbursed the funds.

Q. One of the?

A. A secondary offering where shares were sold and I may have taken them into an account to disburse the funds.

Q. Would that have been into a client account or would it have been into a dedicated account?

A. Well, it would be a dedicated account. If you want to call it a 'client account'.

Q. That's what I am asking you about. Was it a dedicated client account or it was an account Mr. O'Brien asked you to open in your own name?

A. It would have been an account in my own name. That would have been done just for sheer, the logistics of it. Can I check this and come back to you?

Q. Of course, of course. But apart from that, were you ever asked to open an account like this in Ireland to receive a specific payment from Mr. O'Brien?



A. No.

Q. So this was unique, in fact, wasn't it?

A. I'd have to say, yeah, it was unique.

Q. And would it not be reasonable to suggest it was designed to conceal?

A. I don't see it that way.

Q. Well, anyone looking at these accounts would say that this was an account of yours, isn't that correct?

A. Correct.

Q. And anyone seeing the payments to Mr. Austin would think that you had made the payments, isn't that correct?

A. Yes, that's reasonable, yeah.

Q. And anyone looking at Mr. Austin's accounts on the other side would see the money coming from this account, isn't that correct, after torturous checking, you'd agree, and I mean that, going through the various steps which the money took, you'd see it coming back into that account, isn't that correct?

A. Well, the steps sorry, I am a bit lost on the steps.

Q. Well, so were we when we started here and we had to do a lot of work on tracing one or two bank accounts. But just take it through banking steps, the transfer of money?

A. Well, it was a straight TT from

Q. Well, the first one wasn't. The first one

A. It was a draft.

Q. - i;½50,000 of a draft?

A. Yes.

Q. That would bring you back to Allied Irish Banks in the Isle of Man. You then have to find out which account was debited in respect of that particular draft, isn't that right?

A. That would be just clearing the draft.

Q. And then you'd have to find out from, at Mr. Austin's end, where the money had arrived from into his account and trace it back to this particular account in the Isle of Man, isn't that correct?

A. Yes.

Q. But you wouldn't trace it back to Denis O'Brien that way, would you?

A. Without David Austin

Q. Mmm?

A. Without David Austin's confirmation you wouldn't.

Q. Without you Mr. Austin is dead without you, isn't that right? At the time yes, at the time without David Austin's confirmation, you are absolutely correct?

A. He was alive, I mean, he could have confirmed.

Q. You are absolutely correct, Mr. Phelan, Mr. Austin was central to these two issues and none of these matters were brought to the attention of the Tribunal when Mr. Austin was alive, isn't that correct, first of all by Mr. Austin, or by anyone else, isn't that correct?

A. Yes.

Q. So I must suggest to you that an outsider looking at it, without you being able to be of assistance to say who the true owner of this account was, would never make the link between Mr. Austin and Denis O'Brien, isn't that correct?

A. Correct.

Q. And as you say, you acted on instructions in setting up opening the account and receiving the money and making the disbursements. Would it not be reasonable to assume that the person who gave you those instructions wished to ensure that there was no link to him?

A. It would be reasonable to assume that from those facts.

Q. When you spoke to Mr. O'Connell about Mr. O'Brien's accounts, had you any previous discussions with Denis O'Brien before you spoke to Mr. O'Connell?

A. I don't recall any.

Q. Did you suggest to Mr. O'Connell that he should perhaps take the matter up with Mr. O'Brien himself?

A. I don't think so, no. I mean, this was a telephone call. My involvement in this was very it would be a small amount, you know, it was a telephone call from Owen.

Q. Well,

A. Like, I wasn't, you know, very involved in this examination.

Q. I can understand that, Mr. Phelan, and I just want you to be clear why I am asking you these questions at the moment. You see, when Mr. O'Brien gave evidence himself, and he was asked about these matters, his view was that he was very busy on the roadshow and that these matters were matters which were left to you and Ms. Foley and that both of you would have been aware of the significance attached to the inquiries being made by Mr. O'Connell and that he, in effect, left these matters to you and Ms. Foley; would you agree with that?

A. Well, I'd agree with the part that says he was very busy on the road and, you know, he didn't get involved in the accounting side of this.

Q. Would you disagree with it anywhere else?

A. I think you said that they were left to me and Ann Foley, is that the second part of it.

Q. That was the import of his evidence, yeah.

A. It's probably reasonable but I think it's painting me into the examination more significantly than I was involved.

Q. Very good.

A. That's all.

Q. Now, I take it that if Mr. O'Connell was asking you about any other 'significant accounts' I think is the expression used by him, had he informed you that he had been speaking to the American lawyers?

A. I have to say that I don't remember, I actually don't remember a lot of these conversations. If you just take the just to go back on the IPO again. This would have been at the tail end of it when the whole thing was like, I have read Owen's statement and he says he was seeking confirmations from me but I have no reason to believe that's what he thought, but I certainly did not have I mean, that call there, on the 6th, I just have no recollection of it at all.

Q. Well,

A. I have no reason to believe that what Owen is writing down there isn't

Q. that he is correct in what he is writing down?

A. Yeah.

Q. But just to deal with that, were you aware that this whole controversy which arose could have had the effect of causing the IPO to be pulled? Were you aware of that?

A. I was aware that if the allegations that Michael Lowry was paid they were very significant.

Q. Because the IPO at least would have had to have been delayed, isn't that correct?

A. Yes.

Q. Consideration would have to be given as to what disclosures should be made, isn't that correct?

A. Yes.

Q. And the effect could have been catastrophic, as Mr.

O'Brien said himself, isn't that correct?

A. That's correct, yeah.

Q. Did you have any interest in ESAT Telecom yourself?

A. I was subsequently granted some options. At that time, again I am not quite sure when my options were granted, but I wouldn't I had no shares in the company.

Q. At the time?

A. Yeah.

Q. And can you remember when you were granted the options?

A. I can't I might have got them around about the IPO time.

Q. Around the time of the IPO?

A. Yeah. I'd have to check that one.

Q. Yes, of course.

A. But strangely enough, it was sometime afterwards I became aware that I was actually granted options at all. It wasn't something that I was informed, I was being granted options, until sometime afterwards.

Q. And were these options granted to you in respect of the work you had carried out on the IPO?

A. I would say it was granted in recognition of my work with Denis O'Brien in ESAT over the years.

Q. What were your options worth ultimately?

A. I sold some maybe \$2 million, give or take.

Q. And

A. I have to say though, at the time, just at the time I had no knowledge of being granted options. I had no

financial interest in this company bar trying to get

the deal done.

Q. Can I take it you would have been due fees, perhaps?

A. Yes.

Q. And were you aware that if anything pointed to  $\frac{1}{2}$ 100,000

moving in Michael Lowry's direction, whether getting to

him or getting stuck with an intermediary, that that

was a significant matter?

A. Yes.

Q. And that Mr. O'Connell would have to be informed about

that because he'd have to look at the situation,

consider the legal implications of it and give whatever

advice was appropriate to the board, isn't that

correct?

A. Yes.

Q. And in all of those weighty issues arising, that the

IPO was in danger, it never occurred to you to inform

Mr. O'Connell of the payments to Mr. Austin?

A. No, never occurred to me.

Q. Never occurred to you?

A. I saw this as a purchase of a property, nothing else.

Never saw it as anything else.

Q. Well, there are a number of issues really, Mr. Phelan.

Firstly, you have informed the Tribunal that you

had am I correct in this effectively forgotten

about the account, the bank account?

A. Mmm.

Q. You were aware that  $\frac{1}{2}$ 150,000 had gone to Mr. Austin in two payments, one of 50,000, one of 100,000, isn't that correct?

A. Yes.

Q. So you did remember that at the time you spoke to Mr. O'Connell?

A. I just never put it together. I never put it together.

Q. You never put it together?

A. No. No, I mean when you say now, in reflection, looking back, 150,000 that

Q. The figure of  $\frac{1}{2}$ 150,000 is

A. That figure of  $\frac{1}{2}$ 150,000, today, looking back and all at these notes, is very significant, but then I saw it as being Denis O'Brien paying  $\frac{1}{2}$ 150,000 to Austin for a house.

Q. Very good. If we deal with it that way, so. You now see the significance of matters, don't you?

A. I do, absolutely.

Q. And if you had understood the significance from where you sit now, it's undoubtedly a matter you would have brought to Mr. O'Connell's attention, isn't that correct?

A. Undoubtedly if I knew that David Austin opened an account and lent money on to Michael Lowry, I

Q. Well, at that time nobody would have even known of the suggestion that it was a loan. If you had known that this  $\frac{1}{2}$ 150,000 went into a dedicated account which



was opened for the purpose of receiving it and that out of that, i.e. 147,000 was paid to Michael Lowry and that on the 7th of February, 1997, the money came back into the account from Michael Lowry and you were that was the day the McCracken Tribunal was established by the way that you then became aware of discussions about intermediaries and money getting stuck with intermediaries, all of these would have caused alarm bells to go off in your head and you'd have brought the matter to the attention of Mr. O'Connell, I suggest, would you?

A. I would, yes.

Q. But at this time, and I am just trying to distinguish the various elements now, you had effectively forgotten about the bank account. You were aware that money had gone to Mr. Lowry, but you didn't consider it, Mr. Austin I beg your pardon, to Mr. Austin but you weren't you didn't consider it particularly relevant because you didn't put it together in your own mind. It was just a payment to David Austin for the purchase of a house. That's how you saw it at the time?

A. That's how I saw it.

Q. And that's why you didn't bring it to Mr. O'Connell's attention at that time?

A. Since July '96 and this particular inquiry, I'd actually spoken to David about the house. I mean, as

far as I was concerned it was an open and shut case.

It was something

Q. you now see things slightly differently, of course?

A. Very differently.

Q. And I am going to have to ask you about your dealings

with Mr. Austin and I appreciate that Mr. Austin was a

close personal friend and I appreciate that you are one

of his executors but Mr. Austin, when you spoke to him

about the political contribution in the first instance,

never told you about the route of that particular

money, isn't that correct?

A. The 50,000?

Q. The 1/2 50,000 from Telenor on an invoice from him

A. He never discussed the accounting side of it, the

invoice side. He told me you know

Q. as far as you were concerned all that had happened

was Telenor had made a \$50,000 donation to Fine Gael

and David Austin was the fundraiser or the organiser of

the event?

A. He organised the event, the dinner.

Q. That's all you knew about it?

A. That's all I knew.

Q. And as far as you were concerned, the money was passed

on at an appropriate time, at the time of the event or

in close proximity to it, as far as you were concerned?

A. As far as I was concerned, yeah.

Q. And Mr. Austin never told you anything else?

A. No.

Q. Now, you had a discussion with Mr. Austin, you think, sometime in 1997, is that correct, about the house?

A. Yes, it was a very I met him at some stage in '97 and he gave me a set of keys, a spare set of keys or something and a few photographs, some album.

Q. Would that have been around September or thereabouts of 1997?

A. It might have been that time, yeah, around that time.

Q. And what did he say to you?

A. He said 'My paperwork needs attention, I need to get something done with my paperwork' and he told me at the time, I think he either mentioned Valmet or Sanchez, Emeliana Sanchez, the lawyer.

Q. He mentioned them. Did he say anything else to you about

A. He said that the thing hadn't been tidied up.

Q. The thing had to be tidied up?

A. Yeah.

Q. And at that time, can I take it he did not inform you that the money that he had received from this particular bank account from Mr. O'Brien had gone into a dedicated account and that money from that account had gone to Michael Lowry? He never told you that?

A. Absolutely not, no.

Q. And can I take it that you only became aware of that

when you became involved in assisting the Tribunal?

A. Correct.

Q. Now, before your discussion with Mr. Austin in 1997, whenever it was, the summer or September or thereabouts, I take it that was the first time he mentioned the house to you?

A. It probably was yeah, probably was.

Q. And can I take it you would have known Mr. Austin and had social dealings with him perhaps between 1996 and 1997? I know he was sick

A. yeah, I would have met him a few times.

Q. And he had never mentioned it to you? I am not suggesting that he should have but he hadn't mentioned it?

A. He never mentioned it.

Q. He never mentioned the purchase of or the selling of a house to Denis O'Brien to you at that time?

A. No.

Q. Did you bring the issue up with him?

A. No.

Q. Now, just in relation to the property in Spain, I think Mr. Austin would have mentioned to you the company Valmet and the name of the lawyer dealing with the matter down in Gibraltar, is that correct?

A. Yeah, the lawyer was in Spain and the administrator is in Gibraltar.

Q. And just to be clear about this, there is no suggestion

of anything improper or unusual. It is not unusual, I think, for properties in Spain to be held in that way, isn't that correct?

A. That's correct.

Q. A company in Gibraltar or wherever?

A. or wherever - offshore.

Q. would own the property and then subsequent dealings just take the form of a purchase of the shares in the company, isn't that correct?

A. That's correct.

Q. It isn't like buying and selling a house here where conveyancing takes place?

A. Conveyance takes place once in the company.

Q. In the company?

A. And then shares are sold.

Q. And I think your firm became involved in this matter in late first of all you had a discussion with Mr. Austin, you think, around the summer or September of 1997, is that correct?

A. Yes.

Q. Was it before or after the Ryder Cup, do you know?

A. I haven't I am not a golf person, I don't know.

Q. Right. But in any event, what he did was he gave you a spare set of keys and said that the paperwork in relation to this would need to be sorted out, is that correct?

A. Yeah. He had lost documentation. I know now what he

lost but at the time

Q. you didn't know at the time?

A. I didn't know at the time what he was talking about.

Q. And what happened was then you and your partner, Ms.

Malone, dealt with Valmet, the company in Gibraltar

which owned the property on behalf of Mr. Austin, isn't

that correct?

A. The same administrator was there, it just happened to

be when David owned it, Finnsbury were taken over by

Valmet, so it was the same man was actually handling

the affairs of the company and I think

Q. And I'll go into the documents later, but I just want

to deal with it, if I can, as you remember it first.

What happened then was Mr. Austin signed certain

declarations that he had lost particular documents,

isn't that correct?

A. Yes.

Q. And new documents were created by Valmet, isn't that

correct?

A. Yeah.

Q. And the property was then transferred to a company in

the Isle of Man, isn't that correct the shares in

the company?

A. Yeah.

Q. And that particular company held the property for the

benefit of Mr. O'Brien, isn't that what happened?

A. That's what happened.

Q. And all of this sorry, this process began in December 1997 into early 1998, isn't that correct?

A. Yes.

Q. And we can see correspondence between your partner, Ms. Malone, and Valmet informing them that you will be in contact with them to inform them of the correct date to put on the trust deed because, you will be able to supply information when the money had moved from this account to Mr. Austin, isn't that correct?

A. I think it's correct, yeah, I'd have to see the letter again.

Q. Very good. And I won't hold you to anything, I just want to get it out. But what I really want to clarify is this, that as far as the company in Gibraltar was concerned, the information which they received for the purpose of putting a date on the trust deed when the property was when the shares in the company moved, that information was supplied by you, isn't that correct?

A. Yes, yeah.

Q. It was not supplied to them by Mr. Austin at any time between 1996 and you supplying that information, would that be correct?

A. Yes. The only thing, when I spoke to Perera, he had been in touch with David about

Q. there were two matters he had been in touch with and I'll deal with the documents. The first one was

Mr. Austin had indicated an interest in disposing of his property and on the second occasion he spoke to him he asked him what he should do in the event of not being able to find certain documents, isn't that correct?

A. Yes.

Q. But the first time that the Gibraltar company were aware of the date which had appeared on the trust deed was when you supplied the information that Mr. O'Brien had paid money to Mr. Austin in 1996 and that's the appropriate date, isn't that right?

A. Yes. Well I think yeah, okay.

Q. sorry, I don't want to cut you off?

A. I was going to say, I know there is an issue in relation to documentation and dating of documentation.

Q. There isn't really, I think, is there? Do you think there is?

A. No, I just

Q. I don't think anyone is suggesting to the contrary, are they, that or are they that before you informed Valmet of the date which was to appear on the trust deed, that anyone else had informed them before that?

A. No, no, no.

Q. I don't think there is any issue on that. I may be wrong. And, in fact, what happened around the time this documentation was being dealt with was that your firm, on behalf of Mr. O'Brien, paid some of the



service charges around the same time, isn't that correct, going back service charges which were due?

A. I believe so, yes.

Q. I think that may be the issue you may have in mind.

But what it was was that your firm, on behalf of Mr. O'Brien, discharged service charges which were due, isn't that correct?

A. Yes.

Q. Now, perhaps we will just look at the documents for a moment. I think it's in book 29 A. You may have them in a different form, Mr. Phelan.

The first document is a file note of Mr. Perera's, I think, isn't that correct. Do you have

A. I will read it on the screen here.

Q. Are you happy to do that?

A. Yes.

MR. GLEESON: Sorry, Sir, I am just wondering could we be furnished with a copy of these documents. We don't seem to be able to locate them at the moment.

MR. COUGHLAN: All right. We'll sort that out. I don't think Mr. Gleeson is suggesting that he didn't get them. He just can't locate them.

CHAIRMAN: It's about 15 from the end of tab 1.

MR. GLEESON: I have no problem with the matter going

on. We are operating from slightly different books.

Q. MR. COUGHLAN: I think the first document is a file note of Mr. Perera's and it's dated 3rd July, 1996 and it's prepared by Mr. Perera and it reads "Telephone conversation with David Austin to explain due to ill health he was considering selling the property in Spain owned by Tokey by way of transfer of beneficial ownership in Tokey.

At present he was still unsure as to the vehicle to be used for the ownership but he said he would keep me informed with developments.

He said that the purchaser was a friend of his and that he would be staying on in the house for a while longer.

He asked for details of procedure to be followed and I explained that he would have to return the declaration of trust which had been issued to him originally and that these would have to be cancelled and new ones issued to the new owners. A deed of transfer of beneficial ownership would also have to be executed.

Mr. Austin said he could not remember where the declarations of trust were kept but would try and locate them and would revert to me."

Now, of course, this document only became available, I think, on the 11th June of 2001 or thereabouts, isn't

that correct, of this year?

A. Yes.

Q. Sorry, I think, just to explain to you, it came as a result of inquiries being made, it came from Valmet, isn't that right?

A. Yes.

Q. You didn't know anything about this particular file note at the time?

A. No.

Q. Now, the second document is a file note from Mr. Perera again and it's dated 11th June, 1997, "Telephone conversation with David Austin who informed me that his health had deteriorated and he was now seriously ill.

He confirmed that he had looked for the declarations of trust everywhere in his various residences but could not find them.

I said I would need a letter of indemnity for lost certificate. He suggested that he would ask the purchaser's accountant in Dublin to deal with me and to get the necessary paperwork sorted out.

Mr. Austin said I would hear from the accountant in due course."

Now, I think then you give evidence of Mr. Austin coming to you, isn't that correct?

A. Yes.

Q. And the next thing that happens is that there is a document from Valmet addressed to you, dated 10th December, 1997. It's a fax.

"Dear Mr. Phelan,

Further to our telephone conversation of yesterday I now attach a draft of a letter of instructions to be signed by David Austin.

I will also require a letter of reference on yourself from either a bank, lawyer or chartered accountant as per the terms of the attached draft.

I also await receipt of the letter of indemnity of lost certificate.

Regards.

MA Perera."

Do you remember receiving this particular letter?

A. Yes.

Q. You do?

A. I do.

Q. What telephone conversation had taken place between yourself and Mr. Perera the previous day, can you remember?

A. It was in relation to the documentation, getting the documentation tidied up for the proper transfer of ownership of the shares.

Q. And was that your first communication with Mr. Perera,

the telephone conversation?

A. I believe it was. I don't remember speaking to him before that.

Q. Now, on the 9th January, 1998, there is another fax from Mr. Perera and it's to your partner, Ms. Malone, isn't that correct, and it reads "Dear Ms. Malone, Many thanks for your letter of the 7th January with enclosures.

I will now list what we need to do.

1. Revoke power of attorney issued on the 19th January, 1988 to Mr. David Austin.
2. Issue new deeds of trust in favour of Walbrook Trustees, (Isle of Man) limited. I understand from my conversation with Mr. Phelan that our nominee shareholders would continue as registered shareholders.

Should I send the new deeds to you or to Mr. Chris Tushingam at Walbrook Trustees?

3. Should I invoice your firm for our fees or should I invoice Walbrook Trustees?

Please note that at present there is an amount outstanding of £514.75 as per the attached copy printout.

I look forward to hearing from you."

Did you do you remember receiving that or did Ms. Malone deal with matters from there on in?

A. Just to put the thing in context, Helen Malone started working for me part-time in September '97 and I had I was under a lot of pressure in terms of work load. She came in, even though she was employed in the same firm helping us out in a separate area, she started working with me and then there was a whole list of issues for her to follow-up on. And this would have been one of them.

Q. This is one of them.

A. But I I did nothing after I spoke to Perera, really.

Q. You didn't do anything?

A. No.

Q. Other than well I'll just quickly run through it so. What happened then was Ms. Malone wrote the letter of the 7th January is there and you can see she is enclosing a letter of indemnity, transfer, letter of instruction, the beneficial owner's certificate, a trust registered in the Isle of Man administered by Walbrook Trustees (Isle of Man). And she gives the contact as Mr. Chris Tushingham and his phone number.

Now, there is a letter which would have been enclosed, I presume, with Ms. Malone's letter to Mr. Perera signed by Mr. David Austin, isn't that correct? That's the next document and it reads:

"Dear Sirs,

Please accept this letter as your instructions to transfer the beneficial ownership in the above company

to Walbrook Trustees (Isle of Man) Limited, whose full name and address appears at the bottom of this letter.

Unfortunately the declaration of trust issued by you in our favour have been misplaced. I enclose a letter of indemnity of lost certificate duly signed. I also enclose deed of transfer of beneficial ownership, duly signed."

That's signed by Mr. Austin.

There is then the letter of indemnity signed by Mr. Austin, dated 7th January, 1998 witnessed by Ms. Malone. And there is a deed of transfer dated 7th January, 1998 signed by Mr. Austin and witnessed by Ms. Malone.

Now, can you remember where Mr. Austin signed those particular documents?

A. Yes, I can.

Q. Where was that?

A. In his apartment in Salthill in Dublin.

Q. His apartment in Salthill. And how was he at that time?

A. He wasn't in great shape.

Q. He wasn't in great shape?

A. No. He had been home for the Christmas, that Christmas, and he stayed on. He came in for Christmas and this was just after Christmas.

Q. And yourself and Ms. Malone went out to him in Salthill?

A. Yes, we did.

Q. And when you say he wasn't in great shape?

A. He had been ill around Christmas time.

Q. And physically was he able to get around?

A. He was I think he was in bed when I called. He got up and, you know, he was in a dressing gown maybe.

Q. And apart from conducting this business, I take it there wasn't much time for too many pleasantries in the state he was in?

A. I'd say I was there for an hour, had a chat with him.

Q. About himself, about his health?

A. Yes.

Q. And can I take it that he still didn't tell you anything about

A. No.

Q. matters pertaining to this transaction or the monies that had been paid through the account in the Isle of Man to you at this time?

A. The Lowry end of it?

Q. No, about the monies about anything. Did he talk about anything to you about this transaction?

A. No.

Q. Or the Lowry end of things?

A. No.

Q. And when you say 'the Lowry end', you mean information



which you now know about monies going to Mr. Lowry from the account which was opened to receive the money which came out of the Isle of Man, isn't that correct?

A. (Witness nods head).

Q. And I think Ms. Malone then wrote to Mr. Perera on the 21st January, 1998 in which she says "Dear Mr. Perera, I refer to your fax of the 9th January concerning the above company. I confirm you should send the new deeds to Mr. Chris Tushingham and an invoice of any outstanding fees.

Your nominee shareholders will continue as registered shareholders as per your fax.

Aidan Phelan will contact you to discuss the date of the trust deed as Mr. Austin was actually paid for the property in July, 1996. Thank you for your prompt attention." So I take it Ms. Malone could only have found that out from you, isn't that correct?

A. Yes, that's right.

Q. And you did, I take it, phone Mr. Perera to discuss the date of the trust deed, did you?

A. I must have done. I don't remember that particular.

Q. And the date which appears on the declaration of trust, do you see that?

A. Sorry, which date?

Q. I am not asking the date on which it was witnessed, it was brought into being, obviously, later, but the date

which appears in the declaration of trust. Do you have this document?

A. Yeah, I am looking am I looking at the Walbrook

Q. Yes, to Walbrook, and it's from Finnsbury.

A. Yes, I have that.

Q. Finnsbury Holdings was the company that held the property, isn't it, on behalf of Mr. Austin and

Walbrook was sorry, I beg your pardon, it's to

Walbrook from Finnsbury, isn't that correct?

A. Yes.

Q. Finnsbury had the shares in Tokey?

A. Yes, that's correct.

Q. Which is the company?

A. Yes.

Q. And Tokey owned the property, isn't that right?

A. That's correct.

Q. Now, the date on the, on this document, do you see "In

witness whereof the Trustees have caused their Common

Seal to be hereonto affixed this 12th day of August,

1996." And then it's signed and sealed, isn't that

correct, do you see that?

A. I see it, yeah.

Q. Do you know when that seal was affixed?

A. No.

Q. It was, was it not sometime in it says the 12th

August?

A. I'd say sometime

Q. It says the 12th August, 1996. It didn't happen then, isn't that correct?

A. That's correct, yeah.

Q. It happened some considerable time later, isn't that correct?

A. That's right.

Q. And it had to be after the 21st January, 1998 when Ms. Malone informed Mr. Perera that you would be in contact with him to discuss the date on the trust deed as Mr. Austin was actually paid in July of 1996, isn't that right?

A. That's right.

Q. And you don't know how this document happens to be dated in that form?

A. I don't. Except for I know that a new declaration of trust would never be raised when an existing one was in existence. You couldn't have two declarations, two owners.

Q. Yes. Well is there do you know of some tax implications or something? It's clear it's backdated, there is no doubt about that, isn't that correct?

A. I wouldn't, like, I am not familiar with the dating of declarations of trust, whether you apply the relevant date at the time of the consideration

Q. Well, what it is is it's the date which the Common Seal is affixed to this. That's what it is, isn't that correct? It's the date on which the document was

executed?

A. It's a matter for Valmet.

Q. I understand that. I am just asking you, I am looking for your assistance, you agree

A. I agree that that date was applied when Perera, when we got involved, that that's what I agree.

Q. The document was backdated, isn't that right?

A. I can't say that. That's a matter for backdated

Q. but on the face of it, isn't it common sense, you spoke to Mr. Perera at the earliest on the 21st January of 1998, isn't that correct?

A. Correct.

Q. About that date?

A. Yes.

Q. This document then comes into being and it says that the document was executed on the 12th August, 1996, isn't that correct?

A. Yes.

Q. Now, a declaration was made by Walbrook Trustees (Isle of Man) Limited, isn't that correct?

A. Yes.

Q. In a document which has been sealed by them on the 15th day of May, 2001, whereby they declare that "The shares specified in the schedule hereto, the certificate in respect whereof has been or will be delivered to you are now and have been at all times since the said shares became held to our order by for Finnsbury

Holdings Limited on the 12th August, 1996 been held in trust for you absolutely and HEREBY UNDERTAKE to transfer or otherwise deal with the said shares as you may from time to time direct and to account to you for all dividends or other monies paid to us in respect of the said shares and to exercise our voting powers and other rights in respect of the said shares in such a manner as you shall, from time to time, direct." And then the name of the company is Tokey Investments and the shares are the shares in the company and the property is the house in Spain, isn't that correct?

A. Yes.

Q. Now, this document is sealed on the 15th May 2001 by Walbrook Trustees and they are declaring that they have held those shares, isn't that correct, effectively, on behalf, in trust for Mr. O'Brien since the 12th August, 1996, isn't that correct?

A. Yes.

Q. And they couldn't have known anything of the sort, isn't that correct?

A. No. I mean, they couldn't have known that at the time, no.

Q. And

A. I'd say they are relying upon Finnsbury's declaration.

Q. Of course, of course, but just to get the but the sequence of events, I just want to get this clear, is

that the date, the date which appears on this trust deed arose as a result of information which you gave Mr. Perera, isn't that correct?

A. Yes.

Q. And nobody else?

A. Yes.

Q. And everything that followed from that, giving rise to documentation which indicates that the shares in this company were effectively held in trust for Mr. O'Brien from the 12th August, 1996, is all based on the information which you supplied to Mr. Perera?

A. Except for he obviously had conversations with David Austin.

Q. Can you say in any recorded attendance there where Mr. Austin indicated to Mr. Perera that he had sold a property, when he had sold it and when the trust deed should date from?

A. No, only by innuendo on the 11th June it would appear he was confirming that, because he was looking for paperwork, that he had the indemnity for lost certificate, that's the only by implication the only independent confirmation.

Q. If you go to the first file note of Mr. Perera's, it's a telephone conversation with Mr. David Austin who explained that, due to ill health, he was considering selling a property in Spain, isn't that correct?

A. Yes.

Q. Owned by Tokey by way of transfer of the beneficial ownership. "At present he was still unsure as to the vehicle to be used for the ownership but said he would keep me informed of the developments.

He said that the purchaser was a friend." Now the term 'purchaser' there is used by Mr. Perera to describe a conversation with Mr. Austin in respect of Mr. Austin considering to sell the property, isn't that correct?

A. I accept that, yeah.

Q. Now, if we go to the second document, "Telephone conversation with Mr. David Austin who informed me that his health had deteriorated and he was now seriously ill.

He confirmed that he had looked for the declaration of trust everywhere in his various residences but could not find them.

I said would I need a letter of indemnity for lost certificate. He suggested that he would ask the purchaser's accountant in Dublin to deal with me and to get the necessary paperwork sorted out.

Mr. Austin said I would hear from the accountant in due course."

You are saying that is confirmation by Mr. Austin that he had actually sold a property at that stage, is that right?

A. I am saying it's the only

Q. I know it's the only document there

A. that suggests that he had.

Q. that suggests

A. It suggests it to me.

Q. All right. And the date on the declaration of

trust sorry, on the trust deed is dated the 12th

August, 1996. Do you know where that date could have  
come from?

A. No.

Q. The money do you know if any other money moved to

Mr. Austin on the 12th August, or thereabouts, of 1996?

A. No.

Q. You don't. Because just to be fair to you in respect  
of this.

A. Sure.

Q. When Ms. Malone wrote to Mr. Perera saying that you

would be in contact with him about the date on the

trust deed, she informed Mr. Perera that money had been

paid to Mr. Austin in July of 1996, isn't that correct?

A. Yes.

Q. And I think we know from the statement of the account

in your name in the Isle of Man that  $\text{£}100,000$  was

transferred to Mr. Austin's account on the 10th July,

1996, isn't that correct?

A. Yes.

Q. And the  $\text{£}50,000$  had been transferred or sorry, had



been purchased a bank draft had been purchased on the 19th July, of 1996, isn't that correct?

A. Yes.

Q. So the date of the 12th August doesn't seem to fit into the equation at all, would you agree?

A. It wouldn't appear to be consistent with when the money actually went to David. I am not sure when he actually received full credit in his account. I mean, Perera maybe could cast light on that, the dating there.

Q. Yes, very good. The  $\text{€}100,000$  to Mr. Austin from your account or sorry, from Mr. O'Brien's account in the Isle of Man went by way of transfer, isn't that correct?

A. Yes.

Q. And it went through Allied Irish Banks branch in Jersey, I think, and then to Mr. Austin's account in Bank of Ireland in Jersey and I think that that I am just trying to check the date if I can as to when it went into the account. The  $\text{€}100,000$  went in to the account on the 26th July of 1996. The  $\text{€}50,000$  went into that account on the 7th August of 1996, but I'd ask you to bear in mind that it, in fact, had gone into a different account of Mr. Austin's previously, so it was transferred from that other account of Mr. Austin's in the branch to this account on the 7th August. So it would appear that the monies went into Mr. Austin's accounts in July, I think, I think towards the end of

July?

A. I'd agree with that.

Q. So you can't cast any light on the 12th August as being a date?

A. No.

Q. Right. Had Walbrook Trustees (Isle of Man) Limited been used as a vehicle by Mr. O'Brien previously, do you know?

A. I am not aware, no.

Q. After the IPO of ESAT Telecom, did anybody have any conversations with you about the issues which had arisen coming up to the time of the IPO which caused controversy?

A. No.

Q. There was no further discussion about the Barry Maloney/Denis O'Brien matter?

A. I think there was more no, I mean, I don't remember any follow-up discussions. I don't remember any.

Q. Right. And did anyone discuss any matter with you about the political contribution?

A. No. I mean, no I am just trying to reflect about what I know now to what I knew then.

Q. I understand the difficulty?

A. Sometimes the perspective is

Q. I understand the difficulty?

A. I don't want to mislead the inquiry. But sometimes it's hard to put these things into

Q. Well, you now know that in February of 1998, Telenor approached Fine Gael, isn't that correct?

A. Yes.

Q. Did you know that at the time?

A. No.

Q. Did Denis O'Brien discuss it with you?

A. No, no. At that time, in or around March '98, Denis O'Brien and myself were not particularly getting on over another transaction I was involved in in Holland. We weren't really that you know, communicating that effectively.

Q. And you still continued to act as his financial adviser at that stage, is that correct?

A. I did.

Q. Up to when exactly did you cease? Was it when he set up his own Treasury Department?

A. Yeah, in around November '99, there was several near partings, but that was kind of the beginning of the

Q. so it was up around November of 1999?

A. Yeah.

Q. And you, at that time, you continued to handle his financial affairs?

A. Yes.

Q. Did Mr. O'Brien appear to you to have an awareness of his own financial situation?

A. He operated very broadly, in a very broad sense of the word, yes. You know, a very broad sense of the word.

Q. What do you mean by that?

A. He wouldn't have had, you know, necessarily a great grasp on the detail.

Q. Well, you mean like the minutiae of an account or something like that?

A. He might have been operating to, sort of in very round figures.

Q. Fair enough.

A. Just a global feel of where he was.

Q. I think as he described it himself, he would know what was coming in and what had to go out, in general terms?

A. That's the way he did his business, yes.

Q. And he'd know that?

A. The notion of a funds flow more than, you know, more than the balance sheet.

Q. And would he have an understanding of the movement of  $\frac{1}{2}$ 400,000 or a half a million, as we saw, in that situation? Do you have any doubts but that he'd be aware of that, that sort of movement?

A. He would, yeah, he would be aware of it.

Q. And that would, in your view, be his understanding of matters in general, he'd see funds coming in and funds going out?

A. Yeah. He is very ambitious and would be lining up, you know, his cashflows.

Q. Very ambitious

A. As he described, he always had a fairly significant

shopping list of projects he would want to get involved in. He'd be more interested in having money available to do them.

Q. Yes. Describe that again. You say he was very ambitious; what do you mean by that?

A. Well, enterprising. Interested in entrepreneurial-type projects.

Q. And achieving them, of course, that would be the purpose of them?

A. All entrepreneurs, yes, are driven by that.

Q. Because I wanted to come on to deal now, if I may, Mr. Phelan, with how you first became involved with the Tribunal, but perhaps it's something I should take up tomorrow, Sir?

CHAIRMAN: I think we are just on four o'clock. It's been a long enough spell for the witness and for the stenographers. Eleven o'clock in the morning if you please, Mr. Phelan, we'll take up your further evidence then.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
WEDNESDAY, 25TH JULY, 2001 AT 11 A.M.